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In Memoriam

MOST REV. VALENTINE T. SCHAAF, O.F.M., J.C.D. 1883-1946

In the presence of the Most Reverend Apostolic Delegate to the United States in the Franciscan Monastery, Washington, D. C., the Friars of the College of the Immaculate Conception offered a Solemn Mass on December ninth for the repose of the soul of Most Reverend Valentine T. Schaaf, O.F.M., J.C.D., Minister General of the Order of Friars Minor.

As the students and the faculty of the School of Canon Law heard the eloquent words of Very Reverend Ignatius Smith, O.P., Ph.D., eulogize the achievements of this outstanding canonist in the spiritual advancement of his Order, they felt as much gratification as the occasion permitted that it was one of their own who had done these things. Once again the world of action was acknowledging its debt to scholarship, in this case the world of Catholic Action. A doctor of the law had led the way in the footsteps of the Master.

The labors of his dedicated hours were shared for many years with the interests of the School of Canon Law. His invaluable participation in its development was not the least, if not the greatest, of his contributions to the Church in the United States. Deeply carved in the School's traditions are the characteristics that were pre-eminently his, characteristics that will as certainly serve the Church through the School of Canon Law as they served it through the offices entrusted to him.

Because of these qualifications, the School of Canon Law may hope to be an unfailing source in which the biographer of this holy man will find significant material for his work. For among his gifts to posterity through a richly endowed priestly life of thirty-seven years not the least is the impress of his character on the School of Canon Law.

Its faculty and its students, relying especially on his continued participation in its work, are confident that the years will not dim that impression. They, in an unrelenting cycle of prayers for him, will perpetuate his memory within its halls. May their zeal for the law redound further to the repose of his soul.

TWILIGHT CHRISTIANS OF THE WESTERN WORLD*

"Beware lest any man cheat you by philosophy, and vain deceit; according to the traditions of men, according to the elements of the world, and not according to Christ." *Col. II, 8.*

RECENTLY a correspondent in Japan wrote for us the tragic story of the Twilight Christians who live in the Gotos Islands, about sixty miles out from Nagasaki.

Three hundred years ago when persecution was raging in Japan, their Catholic ancestors fled to these islands and established there a Christian "underground". Their priests were murdered or exiled, and they became a flock without a shepherd. In the second half of the Nineteenth Century, priests were allowed to return. They were recognized and welcomed by about half of the hidden Christians; but thousands of others failed to come forward.

Today, some 30,000 of these unrecovered Christians are groping in the twilight of their half-forgotten and half-distorted traditions. Their form of Baptism is a corruption of the Latin used by the early missionaries. At least eleven of their prayers seem to be derived from Catholic prayers. In their "Our Father" there are a few intelligible old Japanese words. Their "Hail Mary" contains the words "Ave Maria" and "Sancta Maria" but the remainder does not make sense. The remnants of the old Christian traditions are now encrusted with pagan ideas and pagan practices.

For these people the thread of history snapped about 1640. Yet they still look for the day when priests will come from

*Sermon delivered by the Most Reverend Bryan J. McEntegart, Bishop of Ogdensburg, N. Y., at the Annual "Red Mass" sponsored by the New York Guild of Catholic Lawyers at St. Andrew's Church, New York, N. Y., Friday, September 27, 1946.

overseas to re-establish their religion. Though they have eyes to see and ears to hear, they do not realize that in their midst are the saving doctrines they long for. Such is the history of the Twilight Christians of the Far East—a people whose lips speak the time-honored words of Christianity while their minds think the thoughts of a decadent, futile paganism.

I. The Christian Philosophy of Life

Like the early Christians of the Gotos Islands, our forefathers enjoyed the fullness of the Christian heritage. From the days when St. Paul first set foot in imperial Rome, Christian missionaries flooded over Europe, driving back the curtain of paganism and setting up great Christian centers. Through many centuries the teachings of Christ inspired the growth of social and political institutions and formed the basis for a sound juridical order.

Following the discovery of the new world, the intrepid colonists brought to the Western Hemisphere the culture of their homelands. The roots of American institutions, therefore, reach back to the soil of Christian culture and civilization. For the religion of our pioneers was not just a ritual of worship; it was a philosophy of life, permeating man's daily actions.

Let us examine that philosophy of life. In it as in every philosophy of life, the key is to be found in man's ultimate values. It recognized as the supreme possession of man, immortal life; as his final goal, union with God. All else in life had value only in relation to that end. "What doth it profit a man if he gain the whole world and suffer the loss of his own soul?" Man's material welfare was the means of promoting his higher activities. His use of this world's goods was to achieve the ultimate goal of union with God.

Man's relationships with other men were based on a more fundamental relationship, that between himself and a personal God. Justice was a virtue that had as its motive, obedience to the Will of an infinitely just God. The rights of others were their sacred possessions, inviolable because of the dignity

of human nature and the inescapable authority of God. Liberty and freedom were not the irresponsible yearnings of an unbridled heart, but a God-given faculty to dispose at will of this world's goods within the limits of the supernatural purpose of life.

The eternal happiness to be found in the unending embrace of God, was the center of the Christian philosophy of life, the key to its meaning, the inherent principle of its unity. As all came from God, all tended to God. Man derived his dignity from the image of God impressed on his immortal soul. Mankind was one under the Fatherhood of God. And all men were subject to one universal norm of morality—the will of God, our sanctification.

This in brief is the Christian philosophy of life, the well-spring of the most cherished ideals of that spiritual order, which we know as Western civilization.

II. Materialist Philosophy of Life

Today, however, Western civilization faces the challenge of a radically different philosophy of life, Marxian Materialism. The key to that philosophy, as to all others, lies in its ultimate values. The horizon of Marxian Materialism is drawn in to the ponderable things of life. Its ultimate goal is the unrestrained exploitation of material wealth. Its standard of human conduct is whether an action promotes or retards world domination by the proletariat.

Truth, then, in this philosophy, is not the measure of words by reality, but the clever use of words to advance political or social aims. Justice means not to "render to each his due"; but to seize, to exploit, to gain by whatever means expedient. Right does not depend on a moral obligation and an external inviolability of the moral law, but rather upon the force which stands behind it.

When matter and might are supreme, individuals lose their identity in the masses; human nature loses its dignity. When men are motivated by material values alone, then force becomes their only principle of action. Freedom and liberty

cannot exist where force is supreme. Hence, the inevitable result of a materialistic philosophy of life is either slavery for the masses in a totalitarian regime, or the utter annihilation of the human race in the ultimate clash of force upon force. Such, even now, is the verdict of history.

III. The Modern Confusion

This materialistic philosophy of life, full blown in the Communistic State, is drawn up in deadly array against what we call the Christian way of life, our civilization. Its objectives are clear—world domination and the ruthless exploitation of the goods and peoples of all nations. Its forces are marshalled under an iron discipline.

Against it, the leaders of Western Civilization present a scattered array, wavering in indecision and uncertainty. Our objectives are obscured, our ideas befuddled and our position confused. One thing alone is certain, we are conscious of a crisis in the Western World today.

Many solutions are being offered by diplomats and government officials, by educators, economists, lawyers and scientists. Time and again, they appeal in all sincerity for "Justice" and "Human Rights", for "Freedom" and "Human Dignity", for "Democracy" and "International Unity". Yet, strange to say, their arguments carry little conviction and men continue to wrangle about the meaning of these key words taken from the Christian philosophy of life. While we grope in the darkness, time is running out. The forces against us gather momentum.

What is the source of our confusion? Simply this. The words, which our leaders use, are full of life and meaning and force when they are set in the philosophy of life "according to Christ," and only then. They lose that life and meaning and force when men wrench them from a spiritual way of life and try to set them in a pagan philosophy "according to the traditions of men" or "according to the elements of the world."

Hence it is that the present widespread confusion of Christian language and pagan purpose may well be regarded as the sorry plight of the Twilight Christians of the Western World.

Naturally, the question arises: How did our concepts of the Christian philosophy of life come to be so encrusted with the paganism of our own days?

Almost a century ago, Pope Pius IX, like a watchman in the tower, saw the clouds coming on the horizon. In unequivocal terms he warned men of the dangers hidden in the so-called Liberalism of his day. That danger lay in trying to isolate the economic and political order from all influence of religion and morality.

Forty years later, Leo XIII in his series of great encyclicals pleaded with the nations not to attempt to build the structure of society on the shifting sands of utility and selfish interest. That structure, he declared, can withstand the battering and turmoil of life only when it is built on the solid rock of God-given moral law.

Yet the process was not halted. Men still spoke in familiar terms of "Sacred Rights" and "Justice under the law", but gradually the true meaning behind those words was slipping out of their minds.

Then came the wave of Secularism. We were told openly that religion was purely an inner and private affair. It was void of any sanctions to guide man's organized social relationships. The existence of God was not explicitly denied, but His influence and His moral law were banished from the organized life of society. By degrees this Secularism spread far and wide.

In our schools and universities, millions learned all about the earth and how to acquire its riches, but were left ignorant of their duties to the Creator of the earth and their own true dignity and destiny. Economic life became a hard, cruel and relentless pursuit of gain by employers and by workers. Finally, many of our jurists, repudiating reason as a basis for law, substituted other norms, all reducible in the last analysis

to the will or force of the dominant group. In their thinking there is no place for God's Law or man's inalienable rights.

IV. Christian Resurgence Needed

Thus it is that the remnants of our Christian inheritance have become saturated with a decadent materialism. While lips speak the familiar words of a Christian philosophy of life, hearts seek the baser goals of greed and gain. One is reminded of the words of Christ: "These people honor me with their lips but their hearts are far from me." While our representatives strive to stay the Juggernaut of Materialism abroad, many have yielded to materialism at home. Like fifth columnists, the principles of Mammon have stealthily wormed their way into our Christian pattern of life and have robbed it of much of its virility, its force, its singleness of purpose and its unity.

Last June on the eve of the elections in France, and Italy, Our Holy Father pointed out the fundamental issue. It was whether these nations would "continue to rest on the firm rock of Christianity, on the acknowledgment of a personal God, on belief in the spiritual dignity and the eternal destiny of man", or whether they would entrust themselves "to the unfeeling omnipotence of a materialistic state without any ideal beyond this world, without religion, without God". His words spoken to France and Italy have equal significance for the other nations of the earth.

We cannot serve two masters. We must either purge ourselves of the poison of materialism and restore to our institutions and social order the completeness of the Christian, the spiritual way of life—or we must accept the materialistic way of life with its rule by force, its slavery of the masses, its tyranny and its subjection.

The situation can be set right only by radical changes nationally as well as internationally. Fifteen years ago, Pius XI described the injustices prevailing in the social and economic order and called for a thoroughgoing social reconstruction, but he also warned us that such reconstruction must be preceded

"by a profound renewal of the Christian Spirit from which multitudes engaged in industry in every country have unhappily departed."

On the international level, few have so well diagnosed the crisis of our times as has General MacArthur. Speaking from the Battleship Missouri on the day of the Japanese surrender, he said: "The problem basically is theological and involves spiritual recrudescence and improvement in human character that will synchronize with our matchless advance in science, art, literature and all the material and cultural developments of the past 2,000 years. It must be of the spirit, if it is to save the flesh."

Most certainly a profound renewal of the Christian spirit is needed to impel men to seek before all else the kingdom of God and His Justice. To effect such a change in a world that seems governed only by material forces and distracted by hatred and greed, may appear to be a fantastic dream, but is it any more hopeless than the enterprise of that handful of unknown and uneducated men from a remote Oriental province, who set out to conquer the imperial power of Rome and the intellectual culture of Hellenism?

The process of regeneration will be on its way in the very hour when we Catholics or a considerable portion of us unite in a serious reform of ourselves. In God's own Providence, it may be given to those who are gathered here to start the dawn of the new age. Sooner or later it is inevitable that men's minds should turn once more to search for spiritual reality, and when once the tide begins to flow, all the sand-castles that have been built during the ebb will disappear.

It is not given to me to read the inscrutable secrets of Divine Providence, but this I do know; in the present crisis there rests on every man and woman here today a threefold duty: First: We have a duty to study seriously the principles of the Christian Philosophy of Life. Great moral and religious truths are deep. They cannot be fully absorbed by school children or inculcated in the ordinary Sunday sermon. The professional

man should have an inquiring mind on moral and religious issues. He has a duty to study and to know well the reasons for what he believes.

Second: We have a duty to exemplify the principles of Christ in every action of our public and private life. Ours it is, like St. Thomas More, to be at all times the champions of God's Law as given to us by reason and revelation.

And third, we have another duty. More things are wrought by prayer than this world dreams of. You have come here today to pay the solemn tribute of your great profession to the Supreme Lawgiver of the Universe. You have gathered about the Altar of God to beseech His divine Blessing on our Country and its institutions. But above all, you are about to join in offering the Sublime Sacrifice of the Cross that men may everywhere renounce the weapons of violence, and peacefully submit their affairs to the administration of Justice under God and the Law. May that continue to be your prayer by day and your prayer by night.

And now I leave you in benediction the words of our Holy Father addressed to all men of good will:

"Do not become disheartened. You are many, many more than appearances seem to indicate, even though others by their bravado and arrogance aim to create a false impression of the strength of their ranks. You are strong, and stronger than your adversaries, because your intimate convictions are true, sincere, substantial, founded on eternal principles. God is with you."

REFLECTIONS ON THE NATURE AND STATUS OF CONCORDATS

INTERNATIONAL law and domestic law, as well as canon law, claim the concordat as a part of their respective fields. In addition, political philosophy and the history of the relations between Church and State regard the concordat as a question which time and again has called for an answer. As an engagement between the universal Catholic Church and the sovereign secular State, the concordat assumes a unique position, not only in ecclesiastical, international and national affairs, but also in the field of law.

In a broad, general sense, a concordat may be defined as a legal instrument by which the Catholic Church and a state agree to regulate, on a common contractual and normative basis, certain specific matters of mutual or individual interest.

The manner in which concordats have been concluded has changed in the course of history. In the recent past, particularly in the era between the two world wars, all concordats appeared in the form of international treaties. They are diplomatic documents in the internationally accepted sense. The actual documents usually contain: a preamble designating the contracting parties and their authorized representatives, also mentioning the verification of the representatives' commissions; the text of the treaty; the place and the date of the signature; and, sometimes, a final protocol, or an additional explanatory protocol. Usually an annex is attached stating that the exchange of the instruments of ratification has taken place. Thus, negotiation, signature and ratification are the three phases through which concordats as well as international treaties have to pass in order to become effective in law. It has not been unusual to register such international engagements with the League of Nations, thus showing to what

extent the contracting parties were interested in vesting their contractual obligations with all the requirements of solemnity and formality.¹

The essential element of agreement is also characteristic of the historical development of this institution, although the form in which such agreements appear has changed in the course of history. The first outstanding concordat recorded in history was that concluded between Pope Callistus II and Emperor Henry V in 1122 in the City of Worms, terminating the long disagreement as to the investiture of candidates in certain ecclesiastical offices. This concordat appeared in the form of two individual declarations, issued by the parties, stating their consent to the matters and terms agreed upon. These declarations are recorded in the *Praeceptum Henrici V Imperatoris*, and in the *Privilegium Pontificis*.²

This form remained in use almost constantly through several centuries, until, at the beginning of the nineteenth century, another *modus procedendi* began to replace the earlier form, especially in relation to non-Catholic states. After an exchange of diplomatic notes, both parties promulgated the contents of the agreement individually in conformity with their respective legislative practices. Thus we find, on the part of the Church, Papal bulls, constitutions or briefs, which have their counterpart in corresponding laws, issued and promulgated by the legislative authorities of the states.³

Thus, while—in the technical sense—a concordat always means a specific agreement between Church and State, there is a variety of forms under which such agreements have been

¹ Concordat of Latvia, signed May 30, 1922, registered, upon the request of Latvia with the League of Nations on June 16, 1923, No. 443. *Société Des Nations, Recueil des traités*, vol. 17, 365-373. Convention concerning Missions concluded between the Holy See and the Republic of Colombia, May 5, 1928, registered, upon the request of Colombia, with the League of Nations on August 3, 1928, No. 1808. *Ibid.*, vol. 79, 157-166.

² Angelo Mercati, *Raccolta di concordati su materie ecclesiastiche tra la Santa Sede e le Autorità Civili* (1919), 18, 19.

³ Johannes Baptist Sägmüller, *Lehrbuch des katholischen Kirchenrechts*, 4. ed., vol. I, 1 (1925), 59, 60.

brought about. Similarly, the terms indicating such agreements are various, like *concordia*, *pactum*, *pax*, *tractatus*, *concordatum*, *conventio*. Even in modern times the term of *conventio sollemnis*⁴ is used in some of the official documents, instead of or in addition to the more technical term "concordat".

We call the concordat a specific agreement because it is not the only kind of agreement concluded between Church and State. We know of "accords",⁵ "protocols",⁶ and even the form of a "*modus vivendi*",⁷ which stipulate engagements between these parties. However, these documents, while undoubtedly diplomatic instruments, either lack the solemnity and sanctions of concordats, or concern the interpretation of existing agreements or matters of lesser importance. Such agreements always indicate, at least by implication or by induction on the basis of the surrounding events and circumstances, that the contracting parties have refrained from providing their mutual understanding with the solemnity of a concordat, and have satisfied themselves with a less elaborate contractual basis. Here, too, we find a similarity to international engagements between the states with regard to form as well as *modus procedendi*, for not every international agreement has the solemn form of an international treaty.

These considerations lead again to the conclusion that the concordat is a *pactum sollemne* between Church and State. Indeed this contractual characteristic is the very essence of the concordat. It is, as Wagnon pertinently remarks: "*un traité bilatéral, né de l'accord des volontés des deux parties, établissant une règle de droit qu'elles sont tenues en justice de*

⁴ E.g. Bavaria (1925), Poland (1925), Romania (1929), Prussia (1929), Baden (1933), Germany (1933), Austria (1934); cf. Johannes Baptist Sägmüller, "Die Identität von Konkordat und Konvention zwischen dem Apostolischen Stuhl und dem Staat"—*Theologische Quartalschrift*, CVIII (1927), 343-355.

⁵ E.g. two "Accords" with France (1926).

⁶ E.g. two "Accords" and "Protocols" with Portugal (1928, 1929).

⁷ E.g. with Czechoslovakia (1928).

*maintenir et d'observer fidèlement. C'est un acte solennel qui instaure entre les deux autorités appelées, à des titres divers, à régir les mêmes individus, un régime d'union, de concorde et de collaboration, hautement profitable non seulement aux sujets qui en bénéficient, mais encore à la religion tout comme à la société civile elle-même."*⁸

The fact that some of the major concordats have been, in the course of history, concluded with the purpose of ending a period of dissension between Church and State, or of replacing an atmosphere of tension with that of mutual respect and understanding, has led to the assumption that concordats are in fact "peace treaties". They are now and then characterized as instruments to subordinate the freedom of action of the State to the control of the Church, while, on the other hand, even Catholics are sometimes inclined to regard concordats as possible and probable sources of restriction laid on the Church. No doubt the reasons which lead to the conclusion of concordats between a state and the Catholic Church are primarily based on political considerations. Concordats are one of the various means used to maintain satisfactory relations between Church and State. Each concordat constitutes an individual case, requiring individual consideration of the interests and circumstances which lead to its conclusion; and there is no general principle which would attribute to concordats any exclusiveness or priority. Indeed, there are many states in which neither the Church nor the State has any interest in replacing the existing situation by a concordat. There is no justification for the conclusion that concordats are usually concluded only by so-called Catholic or preponderantly Catholic states. A glance over the list of concordats and agreements concluded, between the two world wars, between the Holy See and the several states furnishes sufficient evidence to refute

⁸ Henri Wagon, *Concordats et Droit International*, Universitas Catholica Lovaniensis Dissertationes ad gradum magistri in Facultate Theologica vel in Facultate Iuris Canonici consequendum conscriptae, Series II, vol. XXIX (1935), 23.

this argument.⁹ However, the same list evidently contradicts

⁹ The following lists all concordats and agreements concluded during this period. We omit, however, supplementary amendments to the original engagements. In addition, we offer a selected list of literature concerning these concordats and agreements. All engagements were concluded during the reign of Pope Pius XI.

Latvia, May 30, 1922, originally concluded for a period of three years with tacit prolongation for one year's period until and unless repudiated within six months before the end of that period by one of the contracting parties—*Acta Apostolicae Sedis* (AAS), XIV (1922), 577 ff.

Bavaria, March 29, 1924—AAS, XVII (1925), 41 ff.

Poland, February 10, 1925—AAS, XVII (1925), 273 ff.

France, December 4, 1926, two accords, *relativement aux honneurs liturgiques dans les pays où s'exerce le protectorat religieux français*, and *relativement aux honneurs liturgiques dans les pays où les capitulations sont abrogées ou non appliquées*—AAS, XIX (1927), 9 ff.

Romania, May 10, 1927, it can be abrogated at a six months' notice—AAS, XXI (1929), 441 ff.

Lithuania, September 27, 1927—AAS, XIX (1927), 425 ff.

Czechoslovakia, February 2, 1928, "*Modus Vivendi*"—AAS, XX (1928), 65-66.

Portugal, April 15, 1928, accord and protocol, concerning boundaries of certain dioceses, and appointment of bishops in Portuguese East India—AAS, XX (1928), 129 ff.

Portugal, April 11, 1929, accord and protocol, concerning the diocese of Meliapur—AAS, XXI (1929), 337 ff.

Italy, February 11, 1929—AAS, XXI (1929), 209 ff.

Prussia, June 14, 1929—AAS, XXI (1929), 521 ff.

Anhalt, January 4, 1932, two financial accords. The texts are not recorded in the AAS; cf. Nikolaus Hilling, "Die beiden Vereinbarungen zwischen dem Hl. Stuhl und dem Freistaat Anhalt, vom 4. Januar 1932"—*Archiv für katholisches Kirchenrecht* (AKKR), CXV (1935), 457 ff.

Baden, October 12, 1932—AAS, XXV (1933), 177 ff.

Austria, June 5, 1933—AAS, XXVI (1934), 249 ff.

Germany (Reich Concordat), July 20, 1933—AAS, XXV (1933), 389 ff.

Literature: (GENERAL AND TEXTS): A. Giannini, *I concordati postbellici*, vol. I (1929), vol. II (1936); J. M. Restrepo-Restrepo, *Concordata regnante S.D. Pio PP XI inita latine et gallice reddita et notis illustrata* (1934), includes an extensive bibliography; A. Perugini, *Concordata vigentia* (1934); P. Parsy, *Les concordats récents* (1936); A. Novelli, "I concordati di Pio XI gli statuti concordatari"—*La Scuola Cattolica* (1938), 3 ff.; N. Hilling, "Das Gesetzgebungswerk des Papstes Pius XI"—*AKKR*, CIX (1939), 324 ff. (LATVIA): R. Ruzé, "A propos des trois derniers concordats du Saint-Siège avec la Lettonie, la Bavière et Pologne"—*Revue de droit international et de législation comparée* (1926), 5 ff.; (BAVARIA): G. Anschütz, *Die bayerischen Kirchenverträge* (1925); K. Rothenbücher, "Die bayerischen Konkordate von 1924"—*Archiv des öffent-*

the assertion that concordats are primarily "peace treaties", for in none of these cases was there actual friction between the contracting parties prior to the conclusion of the concordat. It was only in the Czechoslovakian "*Modus Vivendi*" that a preceding tension was mitigated and finally eliminated in the mutual interests of the government and the Holy See.¹⁰ In

lichen Rechts (1925), 324 ff.; N. Hilling, "Das bayerische Konkordat"—*Hochland* (1925), 672 ff.; (POLAND): A. Giannini, "Il concordato con la Polonia"—*Il Diritto Ecclesiastico* (1925), 319 ff.; F. Grübel, *Die Rechtslage der römisch-katholischen Kirche in Polen nach dem Konkordat vom 10. Februar 1925* (1930); (ROMANIA): L. Honoré, "Le concordat entre le Saint-Siège et le royaume de Roumanie"—*Nouvelle Revue Théologique* (1929), 738 ff.; K. Schwarzlose, "Das rumänische Konkordat"—*Preussisches Pfarrarchiv* (1927), 112 ff.; H. Bednorz, *Le Concordat de Pologne de 1925* (1938); (LITHUANIA): Leo Maser, *Das Konkordat zwischen dem Apostolischen Stuhl und der Republik Litauen vom 27. September 1927 in rechtsvergleichender Betrachtung* (1931); K. Schwarzlose, "Das litauische Konkordat"—*Preussisches Pfarrarchiv* (1927), 198 ff.; Joseph Prunskis, *Comparative Law, Ecclesiastical and Civil, in Lithuanian Concordat*, The Catholic University of America, Canon Law Studies, No. 222 (1945); (CZECHOSLOVAKIA): M. Mostazza, "Tria recentiora Concordata (Lusitania, Cecoslovachia, Lithuania)"—*Periodica de re morali, canonica et liturgica* (1929), 78 ff.; (PORTUGAL): A. Correja de Silva, "Concordatum Lusitanicum"—*Apollinaris* (1928), 280 ff.; (ITALY): R. Giustiniani, "Bibliographia degli Accordi Lateranensi (11 Feb. 1929—11 Feb. 1934)"—*Diritto Ecclesiastico* (1934), comprising the literature of the first five years; P. Ciprotti, "Decennium iuris concordatarii in Italia"—*Apollinaris* (1939), 162 ff.; (PRUSSIA): J. Danzinger, *Das preussische Konkordat von 1929* (1930); A. M. Koeniger, *Das preussische Konkordat vom 14. Juni 1929 und die Zirkumskriptionsbulle vom 18. August 1930* (1931); (BADEN): E. Föhr, *Das Konkordat zwischen dem Hl. Stuhl und dem Freistaat Baden* (1933); (AUSTRIA): J. Haring, *Kommentar zum österreichischen Konkordat* (1934); J. Hollnsteiner, *Das Konkordat in seiner kirchen- und staatsrechtlichen Bedeutung unter besonderer Berücksichtigung der eherechtlichen Bestimmungen* (1934); (REICH CONCORDAT): J. Wenner, *Reichskonkordat und Länderkonkordate*, 4 ed. (1938); K. Krüger, *Kommentar zum Reichskonkordat* (1938); H. G. Germann, *Fünf Jahre Reichskonkordat mit der römischen Kirche* (1938); J. B. Mason, "The Concordat with the Third Reich"—*The Catholic Historical Review*, XCIX (1934), 23 ff.; J. B. Mason, *Hitler's First Foes* (1936), includes examination and translation of the Reich Concordat; Werner Weber, "Das Deutsche Reichskonkordat in der deutschen Rechtsentwicklung"—*Zeitschrift der Akademie für Deutsches Recht* (1938), 532 ff.

¹⁰ M. Buchberger, *Lexikon für Theologie und Kirche*, X (1938), 314-315.

one instance, that of Yugoslavia, ratification of the concordat was abandoned by both parties, when it became clear that its conclusion would not bring about its ultimate purpose.¹¹

Considering the actual situation as it appears from the contents of the concordats, we are rather inclined to find a more positive intent in the general purpose of such agreements than to think of them as instruments for the settlement of disagreements and contested questions. This positive purpose is, in our opinion, to coordinate the interests of the State and the Catholic Church within a particular territory, to define their respective jurisdictions and to provide for methods of collaboration, in respect to matters where both authorities claim rights of participation,¹² and to arrange a working compromise in fields which are regarded as the exclusive right of one or the other party.¹³

The ultimate aim of the concordat, therefore, is to realize and fulfill freedom of religion, and of religious worship and conviction. For the Church, this means that the Catholic is at liberty to live according to his religion and the norms of the ecclesiastical law, that the Church authorities can exercise their functions accordingly, and that both the clergy and the faithful are protected against violation of their legitimate rights. For the State, it means that law and administration are to respect and enforce the general principle of religious freedom as applied to all citizens and inhabitants, and to co-

¹¹ It is dated as of May 25, 1935; cf. A. Christitzsch, "The Yugoslav Concordat"—*The Month* (1937), 244 ff.; M. Réville, "Autour de concordat yougoslave"—*Grande Revue* (1937), 635 ff.; P. Chaillet, "Le concordat yougoslave et l'Eglise serbe orthodoxe"—*La Vie Intellectuelle* (1937), 485 ff.

¹² The so-called *res mixtae*, e.g., education, marriage, the nature of which makes them objects of the jurisdiction of both the Church and the State in one way or another; cf. Johann Haring, *Grundzüge des Katholischen Kirchenrechtes*, I (1924), 44; Willibald M. Plöchl, "The Fundamental Principles of the Philosophy of Canon Law"—*THE JURIST*, IV (1944), 72 ff.

¹³ Leo XIII, litt. Encycl. "*Immortale Dei*", 1 nov., 1885, original Latin in *Acta Sanctae Sedis* (ASS), XVIII (1885), 162-179, English text in Harry C. Koenig, *Principles for Peace* (1943), n. 52 ff. F. X. Wernz-P. Vidal, *Ius Canonicum*, vol. I (1938), n. 220 ff.

ordinate the specific interests of the Catholics living within the boundaries of the state, with the particular rights and obligations of the secular society and its government.¹⁴

As we said already, it is clear that this aim need not necessarily be attained by way of a concordat. It should be added, on the other hand, that the concordat or similar agreements (i.e. engagements entered between the Holy See as the organ of the universal Catholic Church, and the State) are not the only contractual instruments which guarantee religious freedom. We know of international agreements between states—thus between purely “secular” authorities—to protect religious interests;¹⁵ and of relevant clauses, inserted in more general treaties.¹⁶ We also know of engagements made in the past as well as in modern times between a state and an individual Catholic diocese.¹⁷

¹⁴ Rudolf Köstler, *Das österreichische Konkordats-Eherecht* (1937), 14;—Edward Roelker, “The Citizen of the State and the Faithful of the Church”—*Ecclesiastical Review*, CVII (1942), 337 ff.

¹⁵ A. Hobza, “Questions de droit international concernant les religions”—*Recueil des cours de l'Académie de droit international de La Haye*, V (1924), 368-421.

¹⁶ E.g. religious freedom and liberty of conscience is mentioned in 65 treaties negotiated by the United States with 43 countries: 1782, Netherlands; 1783, Sweden; 1785, Prussia (and 1799); 1795, Algiers (1815 and 1816); 1796, Tripoli (1797, 1805); 1803, France; 1819, Spain (1898 and 1902); 1824, Colombia; 1825, Central America; 1828, Brazil; 1831, Mexico (1848, 1853); 1832, Chile; 1836, Peru-Bolivian Federation; 1836, Venezuela (1860); 1839, Ecuador; 1844, China (1858, 1868, 1903); 1846, New Granada; 1849, Hawaiian Islands; 1849, Guatemala; 1850, El Salvador (1870, 1926); 1851, Costa Rica; 1851, Peru (1870, 1887); 1853, Argentina; 1856, Siam (1920); 1858, Bolivia; 1858, Japan (1894, 1922); 1859, Paraguay; 1864, Haiti; 1864, Honduras (1927); 1867, Russia; 1867, Dominican Republic; 1867, Nicaragua; 1867, Madagascar (1881); 1886, Tonga; 1891, Congo; 1916, Denmark; 1923, Germany; 1924, Great Britain; 1925, Hungary; 1925, Estonia; 1928, Austria; 1928, Latvia; 1930, Great Britain and Iraq.

¹⁷ However such an agreement has no international and diplomatic character. The power of bishops to conclude such engagements, particularly under the norms of the Code of Canon Law, is disputed, cf., e.g., F. M. Cappello, *Summa iuris publici ecclesiastici* (1928), 385, who denies this power, while H. Wagnon (*op. cit.*, pp. 114, 115) expresses himself in favor of such agreements. Aside from historic precedents, there are also examples of more recent times;

Finally, we should mention here the various agreements between several German states and Protestant Church bodies¹⁸ during the era of the Weimar Republic, which were patterned to a certain extent, after the German state concordats.¹⁹ However, of all these engagements none can actually be called equivalent to a concordat. One of the reasons for this assertion is the position of the Holy See as the one necessary constituent party to a concordat.

In one sense, the concordat is an agreement between two fundamentally distinct powers.²⁰ Not only are the aims different, but Church and State are in different categories.²¹ However, in spite of this fundamental distinction, both institutions meet in the sphere of international relations. Attempts to answer the question, "What is the exact position of the Catholic Church in her international relations with the

cf. A. Mercati, *op. cit.*, (Portugal, 1288, 1516), 89-111, 251-253; (Lucca 1826), 697-700;—agreement (Übereinkunft) between the bishop of Basel-Lugano and the Swiss Canton of Luzern, of May 18, 1918, recorded in *Schweizerische Kirchenzeitung* (1919), nr. 4 and 5, including a commentary by A. M. (Meyenberg), "Die Neuordnung der staatskirchlichen Verhältnisse im Kanton Luzern"—*AKKR*, XCIX (1919), 150; cf. also the interesting study of Henri Marmier, *La Convention du 23 avril 1858 entre l'Evêque de Lausanne et Genève et l'Etat de Fribourg. Contribution à l'étude juridique des relations entre l'Eglise et l'Etat de Fribourg au sujet de la surveillance des biens ecclésiastiques* (1938).

¹⁸ Treaty of the Free State of Prussia with the Evangelical Territorial Churches (May 11, 1931); Treaty between the Bavarian State and the Evangelical-Lutheran Church (November 15, 1924); Treaty between the Bavarian State and the United Protestant-Evangelical-Christian Church of the Palatinate (November 15, 1924).

¹⁹ The juridical status of these administrative agreements (Verwaltungsverträge) is disputed; cf. E. Frosthoff, "Die Verträge zwischen Staat und evangelischer Kirche. Zugleich ein Beitrag zur Lehre vom öffentlichrechtlichen Vertrag"—*Deutsche Rechtswissenschaft* (1939), 141 ff.; H. Liermann, "Das evangelische Konkordat"—*Archiv für öffentliches Recht*, Neue Folge XIII (1927), 381 ff.; C. Boos, "Katholische Konkordate und evangelische Kirchenverträge unter besonderer Berücksichtigung des evangelischen Memelabkommens von 1925"—*AKKR*, CVII (1927), 33 ff.

²⁰ R. Köstler, *op. cit.*, pp. 14 f.

²¹ W. M. Plöchl, *op. cit.*, p. 71.

community of nations?" have resulted in the development of a variety of theories, which in themselves offer an interesting topic for analysis and discussion.²² However, in order to remain within the limits of our own examination, we can mention only the fundamentals of the problem.

The organ through which the Catholic Church acts in her international relations is the Holy See. This is an institution entirely different from the State of the Vatican City. The latter, although small in size, is a state rather than an ecclesiastical institution. Indeed, both the Holy See and the State of the Vatican City²³ have distinct positions in international law. The fact that through the person of the Pope, there is personal union of the heads of both entities, in no way affects the separateness of the positions. This distinction has been overlooked time and again by writers investigating the status of the Holy See, particularly during the period between 1870 and 1929, when the Papal States had disappeared as sovereignties in international law.²⁴ Neither could the Papal States in the past, nor can the State of the Vatican City at present conclude concordats. A treaty entered into by the State of the Vatican City with another state or combination of states is an international engagement between State and State, but not between Church and State.²⁵ The elaborate distinction made in the Lateran Treaties between the Italian Concordat and the

²² H. Wagnon, *op. cit.*, pp. 40 ff.

²³ As a consequence of the Lateran Treaties of 1929, and the creation of the State of the Vatican City a great number of writers have undertaken to analyze the problem. A good bibliography is to be found in M. R. Giustiniani, *op. cit.*, and in H. Wagnon, *op. cit.*, pp. 56 ff.

²⁴ During this period many theories were advanced which may be grouped into six schools of thought: (1) The Pope is excluded from the international juridical order; (2) The Papal States survived *de iure*, but not *de facto*; (3) The Pope is an artificial person of international law; (4) The Pope is *persona sui generis*; (5) The Church as such is a person of international law; (6) The Holy See is a person of an inter-sovereign law; for a detailed analysis cf. H. Wagnon, *op. cit.*, pp. 47-56.

²⁵ A list of conventions concluded between the State of the Vatican City and other states, as well as the adherence to several international conventions may be found in E. Chardavoine, *Annuaire pontifical de 1930*, 858.

engagements which settled the problems resulting from the destruction of the Papal States and the creation of the State of the City of the Vatican, is a vivid illustration of this fact.²⁶

The status of the Holy See in international law is independent of the existence of the territorial sovereignty exercised by the Pope. The Church claims for herself the right to conclude treaties²⁷ and the right of active and passive legation;²⁸ she exercises these *de iure* and *de facto* rights through the Holy See. The extent to which this status is actually acknowledged in international affairs can be judged from the well-known position of the Holy See at the present time. Speaking from the standpoint of international law, it is the Holy See which functions in the international relations of the Catholic Church. Thus, in the field of international law, the Catholic Church is personified by her organ, the *Sedes Apostolica*, the Holy See. It is this organ which takes its place in the international community as a *personne normale*, as Wagnon says.²⁹ It is an institution, although quite unique in kind, which deals as a juridical person with other juridical persons, the states, in the field of international law and relations.

This organ, the Holy See, does not act on behalf of a territorial fraction of the Catholic Church, i.e., the Catholic Church as established in a particular country. All its acts are performed on behalf of the universal Catholic Church, in spite of the fact that the contents of a concordat apply only to a regional part of the Church. Thus, the Holy See, in entering into an agreement with a state concerning matters pertaining to the Catholic Church in this state, does not function as an organ of the national, but the universal Church.

²⁶ (1) The Treaty between the Holy See and Italy, terminating the so-called "Roman Question", particularly article 12 concerning the international status of the Holy See; (2) the Financial Convention, concerning indemnities paid to the Holy See; (3) the Concordat. All three treaties are dated as of February 11, 1929.

²⁷ Canon 3 and canon 255, *Codex Iuris Canonici* (C.I.C.).

²⁸ Canon 265 and canon 267, C.I.C.

²⁹ *Op. cit.*, p. 77.

In dealing with the Holy See, the State, on the other hand, remains outside the dogmatic field of religion. Emphasis is laid upon this point, because the fact that a state establishes diplomatic relations with the Holy See, or concludes a concordat, does not imply that the secular power also accepts and recognizes the dogma and philosophy of the Catholic Church. This situation is sometimes misunderstood, although it should be quite clear that the field of international law and relations is not a part of religion. Because of the clear distinction, states in which the prevailing religious conviction of the citizens is not Catholicism have entered into agreements with the Holy See. The so-called neutral or a-Catholic state does not deal with problems of religion as such with the Holy See, nor does the so-called Catholic state. The State does not profess religion—at least it should not try to do so—but under certain circumstances it is in the interests of both Church and State to have their mutual relations strengthened by way of an international agreement.

Like the question of the treaty status of concordats, the nature of the obligation originating in concordats has been an object of considerable discussion—and of disagreement by authors in the fields of international, domestic and canon law. It is obvious that the theoretical approach to this question is connected in a general way with the question of the nature of concordats as such. As in the foregoing discussion, here again we accept the view of the specialists who attribute to concordats a status in international law. However, even among those scholars who view a concordat as having the quality of an international engagement, no common ground is reached by the variety of opinion as to the nature of the obligation created by concordats. However, this case is not exceptional. On the contrary, the quest for an answer to our problem reflects more or less the arguments concerning the nature of international contractual obligations as such.³⁰

³⁰ Cf. for a survey H. Wagnon, *op. cit.*, pp. 172-185.

The majority of canonists adhere to the dualist theory.³¹ The same concept is embodied in the opinions of various authors on the legal relations between Church and State.³² In contradistinction to those theories which claim priority for domestic law,³³ dualism regards the spheres of international and domestic law as two separate and distinct orbits, with an entirely different nature of obligation.³⁴ Wagnon, who objects emphatically to the dualist theory as a formal contradiction,³⁵ advances the idea of superiority of international over domestic law,³⁶ thus placing the weight of the obligatory force of concordats on the basis of international law.³⁷ We feel, however, that this theory somewhat overstresses the importance of international law with regard to Church-State relations. We do admit that there are many arguments to uphold the priority theory if we consider the necessity of subordinat-

³¹ F. H. Vering, "Nachträgliches zum Elsass-Lothringer Staatskirchenrecht" —*AKKR*, XLV (1881), 302-305; W. Kahl, *Lehrsystem des Kirchenrechts und der Kirchenpolitik*, vol. I (1894), 244-245; F. E. Schneider, "Die heutige Rechtskraft der Bulle De Salute Animarum" —*Theologie und Glaube*, XVIII (1926), 809-810; M. Bierbaum, *Das Konkordat in Kultur, Politik und Recht* (1928), 123-126; C. Jannaccone, "La natura giuridica del concordato" —*Il diritto ecclesiastico*, new series, vol. III (1928), 288-295; A. Van Hove, *Prolegomena ad codicem iuris canonici* (1928), 61-63.

³² E. Lange-Ronneberg, *Die Konkordate* (1929), 102 ff.; E. R. Huber, *Verträge zwischen Staat und Kirche im deutschen Reich* (1930), 117-123.

³³ G. Jellinek, *Die rechtliche Natur der Staatsverträge* (1880); the same, *Gesetz und Verordnung* (1887).

³⁴ H. Triepel, "Droit international et droit interne" —*Recueil des cours de l'Académie de droit international de La Haye*, I (1923), 71-121; L. Wohlmann, *Die Kompetenz zum Abschlusse von Staatsverträgen nach Völkerrecht* (1931).

³⁵ *Op. cit.*, p. 193.

³⁶ A. Leoni, "Ein Beitrag zur Lehre von der Gültigkeit der Staatsverträge in den Verfassungs-Staaten" —*Archiv für öffentliches Recht*, I (1886), 498-511; F. von Holtzendorf, *Handbuch des Völkerrechts*, vol. I (1885), 118 ff.; H. Kelsen, "Les rapports de système entre le droit interne et le droit international" —*Recueil des cours de l'Académie de droit international de La Haye*, XIV (1926), 227-331; A. Verdross, "Le fondement du droit international" —*ibid.*, pp. 271-307.

³⁷ H. Wagnon, *op. cit.*, pp. 197 ff.

ing the aims of domestic law to a common international law. However, in the case of Church and State we do not have partners who belong to the same category, but parties of a contract who are of a very different nature. This does not contradict the statement made earlier in this discussion, that we regard the Holy See as a juridical person in international law. In our opinion, the parties of a concordat, in entering such an engagement, make use of the rules of international law as a basis of their mutual treaty obligations. Thus we consider international law as a means rather than as a source of obligation in regard to concordats. The common obligation taken upon themselves by the contracting parties has its basis not in international law, but in the norm of natural law: *Pacta sunt servanda*. From this point, the obligation originating from a concordat extends into the sphere of international, domestic and canon law, as required by the nature of the rules of such a contract.

We hold that this is actually the philosophy expressed in all contemporary concordats and accepted by the contracting parties. The parties to a concordat are bound to fulfill the commitments, that is, to effectuate within their jurisdiction the norms of the agreement. The obligation to live up to these commitments stems from natural law;³⁸ it is solemnized by means of an international engagement in making which the contracting parties implicitly agree that they wish to see their contract respected in the field of international law and protected by the norms of international law. In entering this sphere the concordat gains momentum—as any other international engagement does—beyond the immediate relations between the contracting parties.

Turning away from the inter-contractual relation and obligation between the parties to a concordat, we shall next con-

³⁸ Herbert Wright, "The moral bases of international law"—*Proceedings of the Thirty-fifth Annual Meeting of the American Society of International Law* (1941), 52-63; Nicolas Politis, *La morale internationale* (1944), 81 ff., 91 ff.; for an interesting positivist approach cf. Josef L. Kunz, "The meaning and range of the norm 'pacta sunt servanda'," *American Journal of International Law*, XXXIX (1945), 180-197.

sider another important question, that of the province where the rules of the concordat are in force. As a matter of course, the norms of a concordat become effective on the part of the State when ratified and promulgated in accordance with the particular constitutional and legislative requirements³⁹ of the civil authority; on the part of the Church, ratification and promulgation are, in principle, left to the decision of the Pope as the supreme legislator of the Church,⁴⁰ but these formalities consist, in practice, of publication in the *Acta Apostolicae Sedis*. However, in contradistinction to an international treaty, promulgated as law in two or more states, the concordat becomes part of the state law and of the law of the Church. In other words, it becomes simultaneously ecclesiastical as well as secular law.

This is not the sole difference between the concordat and the regular international treaty. The contractual engagement of two states becomes law in two different territories; the concordat, on the other hand, as a rule, is intended to have identical territorial limits.⁴¹ In other words, it comprises the ecclesiastical as well as the secular provinces of a state. This has a very essential consequence, particularly for the Catholics of a concordatory state: They receive the norms of a concordat as state law as well as ecclesiastical law.⁴² This means that they are placed under a double obligation, i.e., as citizens of the State and as faithful of the Church. It is true that not all the norms of a concordat always bind the individual since many of them place obligation solely on the Church and on

³⁹ A. Giobbio, "Des Concordats"—*Annales internationales d'Histoire. Congrès de La Haye des 1, 2, 3, septembre 1898* (1899), 414; F. Cavagnis, *Institutiones iuris publici ecclesiastici*, 3. ed., vol. I (1906), 442; A. Ottaviani, *Institutiones iuris publici ecclesiastici*, vol. II (1926), 275-276; F. M. Cappello, *Summa iuris publici ecclesiastici* (1928), 385; E. F. Regatillo, *Concordatos* (1933), p. 51; H. Wagnon, *op. cit.*, pp. 138-140.

⁴⁰ Canon 9, *C.I.C.*

⁴¹ An exception to this rule is e.g. article XI of the Latvian Concordat which provided for the establishment of a Latvian College in Rome.

⁴² H. Wagnon, *op. cit.*, pp. 77 ff., 194, footnote 1.

the State. As far as the individual is concerned, however, he is placed under the immediate or mediate obligation of two legal spheres. For the Catholic, the co-existence of both spheres of legal obligation is nothing extraordinary since he always finds himself under the rule of the canon as well as the secular law.⁴³ The concordat, however, establishes norms which are identical, under a dual obligation.

In addition, since the chief purpose of the concordat is the coordination of the interests of Church and State in particular matters, both authorities find themselves under the obligation to eliminate law which is contrary to their mutual engagements and to expand or supplement legislation when and wherever required by the terms of the treaty. As a result, both Church and State have to fit the rules of the concordat into the broader spheres of their respective laws. This is the concordatory law: viz., the entire body of norms, canon as well as secular, which, with the concordat as a center and nucleus, regulate matters pertaining to the concordat in the spirit of the concordat.⁴⁴ It is established in the sphere of the Church by way of special legislation, either Papal or episcopal,⁴⁵ and by the State within its sphere of jurisdiction.⁴⁶

In order to throw more light on this question, we shall outline the principal normative contents of modern concordats. They are as follows:

the guarantee of the freedom of the Catholic Religion; ⁴⁷

⁴³ R. Köstler, "Grundfragen des Konkordats-Eherechtes"—*Juristische Blätter*, LXIV (1935), 133 ff., 157 ff.

⁴⁴ In this sense, R. Köstler (*loc. cit.*) speaks of "Konkordats-Eherecht".

⁴⁵ E.g. *Österreichische Ehe-Instruktion, erlassen vom österreichischen Episkopat zur Durchführung des Artikels VII des Konkordats vom 1. Mai 1934* [*sic!*].

⁴⁶ E.g. several Austrian laws and decrees enacted in accordance with the norms of the Austrian Concordat, cf. R. Köstler, *Das österreichische Konkordats-Eherecht*, pp. 7 f.

⁴⁷ E.g. Latvia, art. I; Bavaria, art. 1; Poland, art. I; Lithuania, art. I; Italy, art. 1; Romania, art. I; Prussia, art. 1; Baden, art. I; Germany, art. 1; Austria, art. I.

an agreement concerning the organization or creation of archdioceses, dioceses, and the mode of nomination and appointment of bishops and high ranking ecclesiastical dignitaries with or without participation of state authorities;⁴⁸

the provision for an oath of allegiance to the state to be taken by the bishops before assuming office;⁴⁹

provisions concerning Catholic schools and institutes of higher education, the teaching of religion in public schools, the appointment of teachers, etc.;⁵⁰

the legal protection of ecclesiastical property with or without participation of the state in the administration of such property;⁵¹

the creation and the maintenance of ecclesiastical benefices (*patronats*) with or without financial support by the state, and the nomination or the appointment of lower ecclesiastical officers by either Church or State authorities, or by mutual agreement;⁵²

the protection of the clergy in performing their ecclesiastical duties (including the seal of confession), the exemption of

⁴⁸ E.g. Latvia, art. II, IV, VI, VIII; Bavaria, art. 14; Poland, art. IX, XI; Lithuania, art. IX, XI; Czechoslovakia I, IV; Italy, art. 15-17, 19; Romania, art. II, III, V; Prussia, art. 2, 6-9; Baden, art. II, III, VII; Germany, art. 11, 14; Austria, art. III, IV.

⁴⁹ E.g. Latvia, art. V; Poland, art. XII; Lithuania, art. XII; Czechoslovakia, V; Italy, art. 20; Romania, art. VI; Germany, art. 16.

⁵⁰ E.g. Latvia, art. X, XI; Bavaria, art. 3-9; Poland, art. XIII; Lithuania, art. XIII; Italy, art. 35-40; Romania, art. XIV, XVI, XIX, XX; Prussia, art. 12; Baden, art. VII, IX-XI; Germany, art. 19-25; Austria, art. V, VI.

⁵¹ E.g. Latvia, art. XIV-XVI; Bavaria, art. 10; Poland, art. VI, XIV, XV, XIX, XXIV; Lithuania, art. VI, XVI-XVIII, XXII; Czechoslovakia, II; Italy, art. 9, 10, 27; Romania, art. XII, XIV, XXI; Prussia, art. 4, 5; Baden, art. V; Germany, art. 13, 17; Austria, art. II, XIII, XIV.

⁵² E.g. Latvia, art. VIII, XII; Bavaria, art. 10, 13; Poland, art. X, XIX, XXI; Lithuania, art. X, XVIII, XIX, XXIII; Italy, art. 21, 22, 25, 26; Romania, art. XII, XV; Prussia, art. 3, 4, 9, 10; Baden, art. IV, VI-VIII; Germany, art. 14; Austria, art. XI, XII, XV.

them from call to public offices, tax exemptions in their favor and special procedure in legal actions, civil or criminal, against members of the clergy; ⁵³

the according of the legal position of a juridical person in civil law to the Catholic Church and her institutions; ⁵⁴

free communication between the Holy See and the bishops, clergy and faithful; ⁵⁵

free communication between the bishops and the clergy and the faithful; ⁵⁶

the administration of the Catholic Religion in the armed forces; ⁵⁷

the exemption of the clergy and the members of religious communities from military service; ⁵⁸

the recognition of ecclesiastical feast days by the State; ⁵⁹

the provision for prayers for the welfare of State and Nation; ⁶⁰

regulations governing the establishment and the position of religious orders and congregations, provisions concerning their regional organization in conformity with national boundaries,

⁵³ E.g. Latvia, art. XVII-XIX; Bavaria, art. 1; Poland, art. V, XV, XX, XXII; Lithuania, art. V, XVI, XX; Italy, art. 6-8; Germany, art. 5-10; Austria, art. I, XVII-XXI.

⁵⁴ E.g. Latvia, art. I; Bavaria, art. 1, 2; Poland, art. XV, XVI; Lithuania, art. XVI, XVII; Italy, art. 29, 31, 32; Romania, art. IX; Germany, art. 13; Austria, art. II.

⁵⁵ E.g. Poland, art. II; Lithuania, art. II; Italy, art. 2; Romania, art. IV; Germany, art. 4; Austria, art. I.

⁵⁶ E.g. Bavaria, art. 1; Poland, art. II; Lithuania, art. II; Italy, art. 2; Romania, art. VIII; Germany, art. 4; Austria, art. I.

⁵⁷ E.g. Poland, art. VII; Lithuania, art. VII; Italy, art. 13-15; Germany, art. 27; Austria, art. VIII.

⁵⁸ E.g. Latvia, art. IX; Poland, art. V; Lithuania, art. V; Italy, art. 3.

⁵⁹ E.g. Italy, art. 11; Austria, art. IX.

⁶⁰ E.g. Poland, art. VIII; France (II), III, IV; Lithuania, art. VIII; Italy, art. 12; Romania, art. VII; Germany, art. 30.

and concerning the requirement of citizenship on the part of their superiors; ⁶¹

the status of Catholic lay associations; ⁶²

the guarantee of the civil validity of Catholic marriage; ⁶³

free access of the clergy to hospitals, penitentiaries, and other public institutions, for the ministrations of religion; ⁶⁴

the protection of the special religious needs of national minorities; ⁶⁵

the guarantee of the right to levy Church taxes. ⁶⁶

We have said that the contractual obligation of *both* parties requires both to coordinate their respective laws in order to bring them into harmony with the basic norms mutually agreed upon in the concordat. As a consequence, unilateral deviation from the concordatory rule would be a violation of the concordat. Thus, if either the State or the Church should establish law contrary to the concordat, this would constitute an act against the mutual contractual obligations. It is interesting to note here that the attitude of the Holy See with regard to this problem is so strict, as can be judged from the historic past, that even enactments by a state in favor of the Church, but contrary to a concordat, have been regarded as a violation of a contractual obligation. ⁶⁷ As a rule, only bi-

⁶¹ E.g. Bavaria, art. 2, 9, 13; Poland, art. X; Lithuania, art. X; Czechoslovakia, III; Italy, art. 29; Romania, art. XVII; Baden, art. V; Germany, art. 15, 25; Austria, art. VI, X.

⁶² E.g. Latvia, art. XIII; Lithuania, art. XV; Italy, art. 43; Germany, art. 31; Austria, prot. addit. ad art. XIV.

⁶³ E.g. Lithuania, art. XIV, XV; Italy, art. 34; Germany, art. 26; Austria, art. VII.

⁶⁴ E.g. Bavaria, art. 11; Romania, art. XVIII; Germany, art. 28; Austria, art. XVI.

⁶⁵ E.g. Poland, art. XXIII; Lithuania, art. XXI; Italy, art. 22, Germany, art. 29.

⁶⁶ E.g. Bavaria, art. 10; Italy, art. 2; Baden, art. IV; Germany, prot. fin. ad. art. 13; Austria, art. XIV.

⁶⁷ J. Schmidlin (*Papstgeschichte der neuesten Zeit*, vol. II [1934], 113) reports the case of King Ferdinand II of Naples who in 1857 enacted a series of 8 decrees which in fact abrogated parts of the restrictions laid upon the Church

lateral agreements can lead to an amendment of a concordat or concordatory law. This rule is expressed in most of the modern concordats by the insertion of a clause to the effect that difficulties arising from the interpretation of the concordat or needs calling for special provisions, are to be solved by mutual consent.⁶⁸ Various changes of recent concordats by mutual consent have been made.⁶⁹

Consent to basic changes could actually amount to the termination of a concordat. The Latvian and the Romanian Concordats contain provisions to the effect that both parties reserve the right to repudiate the treaty according to the agreed terms.⁷⁰ However, in spite of the fact that all other modern concordats lack such express provisions, it is clear that by way of a mutual agreement any concordat could be terminated at the instance of one or both parties. The question is, what becomes of the law which, in consequence of a concordat, was enacted by the contracting parties in their respective spheres. Wagnon holds that the concordatory law necessarily disappears with the treaty which is its foundation.⁷¹ We do not agree with this opinion, because the concordat is not the authority of this law, but the legal reason for its enactment.

in the Concordat of 1818. The Holy See, nevertheless, protested this unilateral violation of norms of the concordat. Another interesting case is reported by H. Wagnon, *op. cit.*, pp. 236-239, 383-389, involving the status of the French Concordat of 1801, and the convention concluded with King William I of The Netherlands in 1827. The attempts to modify the latter convention were unsuccessful. Eventually, in 1852, it was repudiated by mutual consent.

⁶⁸ E.g. Bavaria, art. 15; Italy, art. 44; Romania, art. XXII; Prussia, art. 13; Baden, art. XII; Germany, art. 33; Austria, art. XXII.

⁶⁹ E.g. Accord concerning the interpretation of article IX of the Romanian Concordat of May 10, 1927, concluded May 30, 1932; cf. AAS, XXIV (1932), 209-218; amendment to the Latvian Concordat concerning the elevation of the diocese of Riga to an archdiocese, etc., January 25, 1938—*Il Monitore Ecclesiastico* (1938), 62.

⁷⁰ Cf. footnote 9, *supra*, Latvia, Romania.

⁷¹ *Op. cit.*, 403: *Le droit concordataire disparaît nécessairement avec le pacte qui en est le fondement.* However, he then admits that the extinction of the respective domestic and ecclesiastical laws *dépend uniquement de la volonté du pouvoir dont elles émanent.*

Canon law, as well as secular law which was established by the respective authorities, was created because the contracting parties had taken upon themselves the obligation to act according to the terms of the concordat, including the obligation to legislate, if such legal provisions were necessitated by the treaty. The force of such law is therefore independent of the existence or non-existence of the concordat at a given moment. There is no reason why laws, established by either Church or State in conformity with the provisions of a concordat, could not continue after the termination of the agreement, if this were convenient to the party concerned. What ceases after the cessation of a concordat is the obligation to abide by the norms of the engagement itself; thus, the former parties are now free either to maintain the *status quo* in their respective fields, or to make amendments.

Aside from the problem of the termination of a concordat by virtue of bilateral consent, the question arises whether or not a concordat can come to an end without, or independently of, or even against the will of one or both contracting parties. There is considerable agreement among canonists and students of international law that the principle of the clause, *rebus sic stantibus*,⁷² should have a proper place also in considerations concerning the position of concordats. However, there is considerable disagreement as to the applicability of this clause, and in particular as to who might call for its application. This is due to the position taken by a number of leading canonists of the past as well as of more recent times, who are inclined to reserve to the Church the right to invoke the clause, *rebus sic stantibus*, or at least to claim for her priority and the right to

⁷² E. Kaufmann, *Das Wesen des Völkerrechts und die 'Clausula rebus sic stantibus'* (1911), pp. 204 ff.; P. Fauchille, *Traité de droit international public*, vol. I (1921), part 3, 443 ff.; R. Jarrige, *La condition internationale du Saint-Siège avant et après les Accords du Latran* (1930), 322; H. Wagnon, *op. cit.*, pp. 300 ff.; T. Young Kuang, *The doctrine of rebus sic stantibus in international law* (1935). Ch. Fairman, "Implied resolutive conditions in treaties"—*American Journal of International Law*, XXIX (1935), 219-236; C. Lipaetiti, *La clausula rebus sic stantibus* (1938).

judge a situation, if the State wants to be free from certain contractual obligations of a concordat, or from the concordat as such, by invoking the rule in question.

We do not intend to engage here in a lengthy discussion or detailed analysis of the leading opinions advanced in favor of this theory.⁷³ We hold that the clause, *rebus sic stantibus*, is a principle of natural law, the application of which is justified in all cases where the formalistic fulfillment of a contractual obligation would actually violate or frustrate fundamentals of natural law as such. This position corresponds to the principle of *epikeia*, a basic rule of canon law.⁷⁴ The ultimate postulate of a concordat is, that it will help to safeguard and facilitate the Church's Divine mission in her relations to the State and the individual, and to protect man's natural obligation and right to worship God. These rights and obligations, Divine and natural, exist without and independent of a given concordat. The concordat is but one of the many possible ways of harmonizing these ultimate aims with the temporal interests of the ecclesiastical and of the secular society. In the light of legal philosophy, such a concordat has to be qualified as positive human law. It is therefore subject to the limitations of such law. No such engagement can rank higher than the principle itself which it is destined to serve. As a positive contract, the concordat contains positive norms which in one way or another define the mutual obligations which are

⁷³ The reluctance of certain canonists on this point is partly caused by the attitude taken by the Holy See with regard to the French Concordat of 1801, when it was unilaterally repudiated by the French in 1905. Cf. Pius X, litt. encycl. "*Vehementer Nos*", 11 febr., 1906—ASS, XXXIX (1906), 6-12. These canonists hold that the judgment whether or not a repudiation of a concordat is justified should be left to the Holy See; cf. A. Giobbio, *op. cit.*, p. 333; A. Ottaviani, *Institutiones iuris publici ecclesiastici*, vol. II (1926), 326, 327.

⁷⁴ J. Haring, "Die Lehre von der Epikie"—*Theologisch-praktische Quartalschrift*, LII (1899), 579 ff., 796 ff.; the same, "Epikie"—*M. Buchberger Lexikon für Theologie und Kirche*, III (1931), 722; W. M. Plöchl, "The Fundamental Principles of the Philosophy of Canon Law"—*THE JURIST*, IV (1944), 88 ff.; the same, "Das Legitimitätsproblem und das kanonische Recht"—*Zeitschrift für öffentliches Recht*, XVIII (1938), 58 ff.

to serve the ultimate aim of the contract. If in the course of events such a positive norm becomes obsolete, or, if applied literally, even detrimental to the original purpose of the concordat, it could not any longer be considered a binding obligation. Thus, canonists are right when they hold that the *salus animarum* cannot be impeded by any authority or engagement,⁷⁵ and that the clause, *rebus sic stantibus*, might be invoked whenever such a situation occurs.

However, we find ourselves in the company of those writers who hold that this rule cannot be restricted to the Church alone.⁷⁶ We do hold that the Church has an exclusive competence in defining spiritual and religious needs; but the State, too, has the authority and the obligation to safeguard the interests of the *bonum commune* within the sphere of its jurisdiction. An infringement of natural law on the part of the State would be an act of violation indeed,⁷⁷ and not justifiable, according to this opinion; but the invocation by the State of the clause, *rebus sic stantibus*, in a case where no natural obligations of the civil authority with regard to the above mentioned fundamentals were affected, would be justified if the fulfillment of the terms of the concordat would become an unwarranted burden or actually impossible under prevailing conditions.⁷⁸

It is obvious from the purpose of a concordat that only grave reasons and a *bona fide* application of the clause, *rebus sic stantibus*, will justify the invocation of this rule. If the parties maintain harmonious relations, and if the changes in

⁷⁵ (Cardinal) F. Cavagnis, *Institutiones iuris publici ecclesiastici*, vol. I, 4. ed. (1906), 418; F. X. Wernz, *Ius Decretalium*, vol. I, 3. ed. (1913) 259; E. F. Regatillo, *op. cit.*, p. 77.

⁷⁶ F. Moulart, *L'Eglise et l'Etat*, 4. ed. (1895), 614; De Meester, *Iuris canonico-civilis compendium*, vol. I (1921), 160; J. B. Sägmüller, *op. cit.*, pp. 62-63; M. Bierbaum, *op. cit.*, pp. 118-119.

⁷⁷ W. M. Plöchl, "The Philosophy of Legitimacy"—THE JURIST, III (1943), 107 ff.

⁷⁸ Thus, a mere pretext would not justify the application of the clause, *rebus sic stantibus*.

circumstances are of a permanent nature, the rational solution would be to proceed to a revision of the concordat in order to bring it into accord with the new situation.⁷⁹ On the other hand, if no renegotiations take place, the concordat would cease to be in force.⁸⁰ This would not, however, free the State from the observance of those obligations which exist already by virtue of natural law.

The situation is quite different if the concordat is repudiated by a unilateral act, violated in its essential norms, or tacitly suppressed by one of the contracting parties. In all such cases, if the action is not justified and is intended to eliminate the concordat or to reject or diminish the stipulated obligations,⁸¹ a principle of natural law is violated: viz., *pacta sunt servanda*. It is recognized in international law as an essential principle, that (except in the case just discussed, where circumstances are essentially changed) no power may free itself unilaterally from the engagements of a treaty or modify the stipulations thereof, unless by way of consent of the contracting parties in a friendly understanding.⁸² In the case of concordats the Popes have time and again stated that the Church is definitely opposed to such violations of the norm of *pacta sunt servanda*.⁸³ The unilateral repudiation or abrogation of a concordat is regarded by the Church, and by most authorities on international law, as an unjust act which does not *de iure*

⁷⁹ H. Wagnon, *op. cit.*, p. 278; A. Ottaviani, *op. cit.*, vol. II, 324, 325.

⁸⁰ H. Wagnon, *op. cit.*, pp. 287, 288.

⁸¹ Thus, this excludes the voluntary repudiation on terms previously agreed upon; cf. *supra*, pp. 28, 29.

⁸² Cf. the Declaration annexed to the Protocol of London of 1871.

⁸³ Cf. litt. encycl. "*Vehementer Nos*" as quoted in footnote 73; Pope Pius IX, *Syllabus errorum*, 8 dec. 1864—ASS, III (1867), 167, nr. 43; the classic example still is not the French, but the repudiation of the Austrian Concordat of 1855, splendidly analyzed by M. Hussarek, "Die Krise und Lösung des Konkordats vom 18. August 1855"—*Archiv für österreichische Geschichte*, CXII (1932), 213-480.

free the violator from its obligations.⁸⁴ On the other hand, the innocent party is at liberty to cease to fulfill the obligations of the concordat, if it is unilaterally repudiated or suppressed, or gravely violated.⁸⁵ It is rather a question of policy than of law, to meet such a situation with appropriate measures.

There is one more point of major importance concerning the bilateral relations of the parties of a concordat. This is the question: To what extent is the validity of a concordat affected by internal changes in a national regime, particularly if such changes affect the fundamentals of the existence or the political structure of a state? In making public the intention of the Holy See to negotiate new concordats with those states which had either come into existence or fundamentally changed their political regimes as a result of the First World War, Pope Benedict XV outlined in a consistorial allocution of November 21, 1921, the point of view of the Catholic Church.⁸⁶ This allocution gained historic importance, because it initiated a new era of concordats.

Benedict XV referred to the new situation, indicating that privileges which at one time had been granted by way of pacts or concordats to other regimes could not be claimed by the newly-created states or by those states which had increased their territory by a transfer of provinces. Moreover, several states had undergone such radical internal changes that they

⁸⁴ H. Grotius, *De iure belli et pacis*, III, cap. 20, 38: *Contra obligationem faciendo, nemo se obligationi eximit*. H. Wagnon (*op. cit.*, p. 285): *La dénonciation unilatérale du concordat est donc par elle-même, non seulement illicite, mais encore inopérante. Les circonstances peuvent néanmoins justifier des exceptions à ce principe*. B. Ojetti (*Commentarium in Codicem iuris canonici*, vol. I [1927], 44-55) holds a singularly different opinion by maintaining that the repudiation of a concordat by a civil power *ipso facto* causes the voiding of the agreement.

⁸⁵ Opinions differ as to the degree of violation or non-execution of the agreement; cf. A. D. McNair, "La terminaison et la dissolution des traités"—*Recueil des cours de l'Académie de droit international de la Haye*, XXII (1928), 520-527 (with bibliography); H. Wagnon, *op. cit.*, pp. 286-287.

⁸⁶ AAS, XIII (1921), 521-524.

could not be regarded any longer as the same juridical person with which the Holy See had made engagements in the past. As a consequence, pacts and concordats formerly concluded with such states by the Holy See had completely lost their force.

There seems to be a discrepancy between the traditional doctrine and practice according to which the permanency of international engagements is not affected by an internal change of regime, however radical, and the theory advanced in the Pope's statement.⁸⁷ Again there seems to be a discrepancy between the statement and the traditional attitude of the Holy See with regard to the permanency of concordats under changed political regimes.⁸⁸ It is not strange that writers have engaged in prolonged discussion, when endeavoring to interpret the Pope's statement with regard to the permanency of concordats under changed regimes.⁸⁹ We share the opinion of a considerable majority of writers who hold that the statement did not in fact alter the traditional attitude of the Holy See, that a change of regime in itself does not discontinue an existing concordat. It is, in fact, another application of the clause, *rebus sic stantibus*.⁹⁰ In serving notice to the states concerned, the Pope announced the principle that the Holy See desired to bring the relations between Church and State

⁸⁷ For the traditional doctrine, already expressed in the London Protocol of 1831, cf. A. D. McNair, *op. cit.*, p. 481; A. Verdross, *op. cit.*, p. 270; for the positivist interpretation cf. H. Kelsen, *op. cit.*, pp. 233-249, 310-311; P. Chailley, *La nature juridique des traités internationaux selon le droit contemporain* (1932), pp. 132-146.

⁸⁸ H. Wagnon, *op. cit.*, pp. 327-328.

⁸⁹ The majority, however, is for the permanency of concordats, cf. A. Giobio, *op. cit.*, pp. 413-414; A. Ottaviani, *op. cit.*, vol. II, 279-284; F. E. Schneider, *op. cit.*, pp. 821-828; E. Lange-Ronneberg, *op. cit.*, pp. 189-200; E. F. Regatillo, *op. cit.*, pp. 46-49, 79-84; A. Kindermann, *Das landesfürstliche Ernennungsrecht* (1933), pp. 207-208; B. Ojetti (*op. cit.*, vol. I, 40-43) takes the opposite point of view.

⁹⁰ H. Wagnon, *op. cit.*, pp. 326-327; A. Ottaviani, *op. cit.*, vol. II, 327, 328; A. Van Hove, *op. cit.*, p. 77; A. Kindermann, *op. cit.*, pp. 207-208.

into accord with the new situation.⁹¹ At the same time, the allocation is a restatement of another traditional principle maintained by the Holy See, viz., that the transfer of territories or the creation of new states does not necessarily transfer the stipulations of a concordat formerly valid in these territories. Thus, we hold that the allocation of November 21, 1921, did not affect the traditional principle of the permanency of concordats under a changed regime.⁹² It was an application of the clause, *rebus sic stantibus*.

The other principle stressed in the allocation, namely, the position of concordats in case of a state succession or a transfer of territorial sovereignty, brings us to the question to what extent third parties can be brought into relation to a concordat. The preceding questions concerned unilateral or bilateral relations, while the present problem involves third parties. We have to distinguish from the very outset, between the question of obligations resulting from an international agreement, and that of the effect of concordatory law, enacted by the State or the Church subsequent to a concordat.

The position taken by the Pope in the above-mentioned allocation confirmed a thesis which has been advanced by many writers on international and canon law: ⁹³ i.e., that the obligations of a concordat concluded between the Holy See and a

⁹¹ E.g. the elimination of several dynasties made the privilege of nominating certain ecclesiastical officers, given to the rulers, obsolete; cf. A. Kindermann, *op. cit.*, for the entire problem.

⁹² It should be noted here that the argument of a change of regime was advanced against the Holy See by the Austrian government on July 30, 1870, on the ground that the definition of the dogma of infallibility by the Vatican Council had definitely altered the nature of the other party. This is the only case in history; cf. M. Hussarek, *op. cit.*; A. Kindermann, *op. cit.*, pp. 321 ff.

⁹³ F. E. Schneider, *op. cit.*, pp. 84-86; U. Stutz, *Der neue Stand des deutschen Bischofswahlrechts* (1909), pp. 38, 39; A. Ottaviani, *op. cit.*, vol. II, 327, 328; M. Bierbaum, *op. cit.*, pp. 120-121; E. F. Regatillo, *op. cit.*, pp. 77-79; H. Wagnon (*op. cit.*, pp. 355): *La convention diplomatique concordataire est, en réalité, conclue entre deux associations souveraines; en application du principe pacta sunt servanda, elle crée un rapport personnel aux sociétés contractantes et doit être considérée, pour tous autres, comme une res inter alios acta.*

particular state cannot be extended to another state, if the first state has ceased to exist, or if parts of its territory have been legitimately incorporated into another state, unless both the Holy See and the new sovereign agree to accede to and to continue with the terms of the engagement.⁹⁴ Thus neither the rights nor the obligations of the original concordat pass over to the new sovereign, nor is there any continuation under the new sovereignty, of the rights and obligations of the Church, as specified in the old treaty.⁹⁵

This raises the question whether or not, on the other hand, any concordat previously concluded by the state successor extends into the territory annexed to it. While the few authors who deal with this question are inclined to answer in the affirmative,⁹⁶ we hold an opinion to the contrary. We agree that the annexation of a new territory, even if it includes the succession to a former sovereignty, does not necessarily affect the existing engagements between the annexing state and the Holy See. However, such existing engagements have been previously concluded with regard to a particularly defined entity with its special needs and peculiarities. It is quite conceivable that the position of the Church-State relations in the annexed territory differs considerably from that in the annexing state, so that an automatic extension of the concordat from the annexing state to the annexed territory might involve a change undesirable to one or both parties. To clarify such a situation would require a mutual

⁹⁴ The application of this principle in the case of Alsace-Lorraine is analyzed by H. Wagnon, *op. cit.* pp. 391 ff. Here, by virtue of a mutual consent of the French government and the Holy See, the concordat of 1801 has been continued in force.

⁹⁵ Concerning opinions to the contrary, cf. P. A. Crnica, "Staat und Kirche in Jugoslawien"—*Festgabe für Ulrich Lampert* (1925), 125-132; Th. Sanders, *Der Einfluss der Staatensukzession auf die Rechtslage der katholischen Kirche im Sukzessionsgebiet* (1927), p. 105; E. R. Huber, *Verträge zwischen Staat und Kirche im Deutschen Reich* (1930), pp. 137-149.

⁹⁶ F. E. Schneider, *op. cit.*, p. 84; Th. Sanders, *op. cit.*, pp. 104-109; C. Jannaccone, *op. cit.*, pp. 310-312; H. Wagnon, *op. cit.*, pp. 357-360.

agreement between the annexing state and the Holy See concerning the annexed territory. This might lead to an extension of the existing engagement, or to an additional accord, or even to the renegotiation of the concordat of the state successor.

As to the concordatory law which concerns the annexed territory, the answer to this problem depends on the status of the concordat itself. The concordatory law, as we define it, is the law which in conformity with the contractual obligations is established by the Church and the State in their respective spheres. The continuation of such law is independent of the existence of the concordat itself. Thus, the cessation of a concordat in an annexed territory does not necessarily result in the abrogation of the concordatory law in the respective field of Church and State. If no new agreement is concluded between the state successor and the Holy See, both powers are free to continue or change such law within the limits of natural law.⁹⁷ Thus, it might even be possible that either Church or State would extend such concordatory norms or part of them, as might be in force in or for the annexing territory to the annexed one. In case of a new Church-State engagement concerning the annexed territory, or the entire state with its new boundaries, both authorities must bring their respective concordatory law into accordance with the new regulations.

All this presupposes, of course, that the succession of a state or annexation of a territory is a fully recognized *de iure* act and not an illegal or mere *de facto* seizure. A forceful annexation of a state or a part of it cannot be considered, in questions relevant to international obligations and consequently to concordats, in the same way as a *de iure* transfer of sovereignty. To stress this point is of importance, because the developments of the Second World War offer several examples. The pace was set by the German conquest in the early stages of this war. In the course of the military successes, certain states and territories were "incorporated" into

⁹⁷ Cf. *supra*, p. 30.

the Greater German Reich. By such acts of forceful annexation these territories became *de facto* parts of the Reich. In the case of Austria, Czechoslovakia, Danzig, France, Lithuania, and Poland, there existed previous engagements with the Holy See. The German Reich, considering the conquest and annexation⁹⁸ of these territories as final, apparently did not feel obligated to honor the engagements with the Holy See. Thus, Austria, Danzig, the Protectorate of Bohemia-Moravia, the Sudeten German territories, the Memel district, the Polish Government General, and Alsace-Lorraine, were considered to be "concordatless territories,"⁹⁹ in which the Reich did not feel bound by any agreement with the Holy See. The terms of the concordats and the Czechoslovakian "*Modus Vivendi*" were made inoperative, and many concordatory laws were replaced by German enactments.¹⁰⁰

The changes which are taking place, or which have occurred more recently in Central and Eastern Europe since the defeat of Germany pose similar problems.¹⁰¹

⁹⁸ We disregard here, for all practical purposes, the German terminology and differentiation, viz. re-union, protectorate, government general, etc.

⁹⁹ "Konkordatslose Gebiete"—cf. Werner Weber, "Die politischen Klauseln in den Konkordaten"—*Schriften der Akademie für Deutsches Recht, Gruppe Verfassungs- und Verwaltungsrecht*, Nr. 3 (1939), 37 ff.; an indication of the attitude of the Church against this German policy was revealed by the Holy See quite recently—cf. *THE JURIST*, V (1945), 555, 556.

¹⁰⁰ W. Weber, "Neues Staatskirchenrecht in der Ostmark und im Sudetenland," *Zeitschrift der Akademie für Deutsches Recht* (1939), 450 ff.; concerning the violation of the Austrian Concordat by Germany and its status after the annexation, cf. J. W. Garner, *American Journal of International Law*, XXXII (1938), 437; V. L. Gott, *ibid.*, p. 713.

¹⁰¹ The Lithuanian Concordat was repudiated by the Soviet authorities as early as the first Russian occupation (1940-1941), i.e. on June 26, 1940. The same situation exists at present following the establishment of the Soviet regime in 1944—cf. Prunskis, *op. cit.*, pp. 10 ff. Similarly the Latvian Concordat is reportedly not recognized by the Latvian Socialist Soviet Republic. Aside from these Concordats the following are affected by *de iure* or *de facto* territorial changes and by the stated policy of the regimes exercising governmental authority there: the German Reich, Prussia, Romania, Poland, and the Czechoslovakian "*Modus Vivendi*". However lack of adequate information does not permit a more detailed analysis.

There can be no doubt that a *de facto* imposition does not *per se* destroy the validity of the original terms in the international and domestic sphere of law. It is obvious that territorial acquisitions which are illegal under international law cannot annihilate international treaty obligations. Thus, in our opinion, the measures taken by e. g. the German authorities during the last war to eliminate conventions with the Holy See and to invalidate concordatory law bind neither the Holy See nor the states affected by such acts. It is the province of the contracting parties to decide when necessity calls for change, and thus arrive at a practical determination of the future status of the respective concordats. Both parties, Church and State, might desire changes in specific instances. It is a question of policy to bring about a solution. In the meantime the applicability of the terms of the concordats in those countries under present conditions will depend on the actual situation and the understanding and the good will of the parties. It should be beyond any doubt that the clause, *rebus sic stantibus*, has one definite limit: The postulate of natural law.

These considerations bring us to the last problem of our analysis: The status of concordats under the rules of military occupation. According to article 46, Annex to Hague Convention No. IV of October 18, 1907,¹⁰² religious convictions must be respected in an occupied territory. The Rules of Land Warfare¹⁰³ prescribe under no. 300:

“The United States acknowledges and protects, in hostile countries occupied by them, religion and morality; * * *

Offences to the contrary shall be rigorously punished”.

Similarly, article 27 of the above-mentioned Hague Convention¹⁰⁴ ordains that buildings dedicated to religious work, etc. shall be spared. In taking these rules as basic aims we come to the conclusion that the military occupant in administering

¹⁰² Malloy, *Treaties*, vol. II, 2281.

¹⁰³ War Department, Basic Field Manual, Rules of Land Warfare, FM 27-10 (1940).

¹⁰⁴ Rules of Land Warfare, no. 58.

the occupied territory by way of a military or civil government¹⁰⁵ is under the obligation to assure religious freedom within his jurisdiction.

To what extent do these rules affect the status of concordats and concordatory law? We said that the concordat in addition to being an agreement under international law, is domestic law by virtue of its promulgation for the legal sphere of the State. It is also ecclesiastical law in the legal sphere of the Church, and consequently its norms are binding mediately or immediately upon the Catholic in his dual capacity as a citizen and a member of the Church. His duty to obey these norms is, therefore, not only a part of his civil obligation, but also of his religious conviction. It is obvious from the contents of a concordat that not all its norms bind the individual proper. This interrelation is stressed here again, because whether the concordat is considered an international treaty obligation or a domestic law, it stands in the closest connection with the religious conviction of the Catholic inhabitant of the occupied territory.

There is no question, in our opinion, that the rules of article 43 of the above-mentioned Convention¹⁰⁶ as well as no. 287 of the Rules of Land Warfare¹⁰⁷ are applicable also to concordats and concordatory law within the limits of religious freedom. Thus, the occupant might suspend the political clauses of a concordat¹⁰⁸ or other norms in case they "affect the welfare

¹⁰⁵ *Ibid.*, no. 284.

¹⁰⁶ (*Ibid.*, no. 282): "Duty to restore law and order.—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

¹⁰⁷ "Nature of laws suspended.—The occupant will naturally alter or suspend all laws of a political nature as well as political privileges and all laws which affect the welfare and safety of his command. Of this class are those relating to recruitment in occupied territory, the right of assembly, the right to bear arms, the right of suffrage, the freedom of the press, the right to quit or travel freely in occupied territory. Such suspensions should be made known to the inhabitants."

¹⁰⁸ E.g. the oath of allegiance to the government of the state taken by a bishop before assuming office.

and safety of his command".¹⁰⁹ He might also eliminate, on the other hand, political laws which impede religious freedom or infringe the terms of a concordat itself.

Exception is sometimes taken to this opinion, on the ground that the Holy See is not a party to the international agreements concerning the rules of military occupation. It might also be advanced that the occupant is not a party to the concordat of the occupied state with the Holy See. However, such arguments would not hold good, since the occupant, because of the limitations placed upon his power by the clauses cited, is concerned with "the laws in force in the country". Inasmuch as the concordat is a part of the laws of the occupied state, it has to be respected accordingly.¹¹⁰

We should like to add that we hold that these principles are valid not only for the *occupatio bellica* in general, e.g., Germany, where the primary purpose is the defeat of the enemy, but also in case of a qualified occupation, e.g., Austria, where the principal aim was the liberation of a country dominated by an aggressor. The Moscow Declaration on Austria made it

¹⁰⁹ E.g. temporary seizure of ecclesiastical property for field hospitals contrary to the immunity of such property by virtue of a concordat.

¹¹⁰ It is still too early to give an accurate picture of the actual position of the German Concordats under the rule of Allied occupation. The German Hierarchy considered the status of the Reich Concordat "one of the pressing problems" at its first post-war conference in Fulda in 1945—cf. *THE JURIST*, V (1945), 556. The Baden Concordat was apparently recognized by the authorities of the French Zone—cf. *THE JURIST*, VI (1946), 156. Similarly Regulation 59 B of the *Written Laws for Germany* governing the administration of the American Zone provides for the observance of the terms of the Reich Concordat. Similar orders provide that churches and other places of worship shall not be used for secular purposes, except as temporary emergency stations, sheltering the wounded awaiting evacuation. On the other hand, the problem of Catholic schools and of religious education in public schools has not always been solved in accordance with the terms of the German Concordats—cf. *THE JURIST*, VI (1946), 156. During the 1946 Fulda Conference of the German Hierarchy information was received that the Allied authorities did not any longer recognize the German Concordats, though they were willing to be guided in practice by the provisions of the Concordats. This led the Hierarchy to refer the information to the Holy See for further guidance in the matter—cf. *THE JURIST*, VI (1946), 542, 543.

clear that the Allies "consider themselves as in no way bound by any changes effected in Austria" since the German annexation of 1938.¹¹¹ Thus, as to the status of the Austrian concordat and concordatory law during the period of Allied occupation, the criterion for decisions made by these authorities should be the position of these norms prior to the German annexation, rather than the changes effected since then. As for any future change in the Austrian concordat, both parties, the Church and the Austrian state, will be the competent authorities to undertake them, if so desired.¹¹²

In concluding our reflections on the nature and the status of concordats, we turn again to the ultimate purpose of such an agreement, namely, to coordinate the interests of Church and State for the fulfillment of man's principal right and obligation to worship God.

In man's endeavors to bring about the most effective solution of this problem, the concordat is a means which, at given

¹¹¹ Herbert Wright, "Attitude of the United States toward Austria"—*78th Congress, 2d Session, House Document No. 477* (1944), 25; U. S. Congress, 78th Cong., 1st Session, *Congressional Record*, vol. 89, no. 164, November 1, 1943, 9026.

¹¹² As in the case of all occupied Central and Eastern European countries and Germany, no sufficient information is available at the time this paper goes to press. The occupying regime in Austria has passed through several stages since the country's liberation in April, 1945. First, military rule was established by the four Allies in their respective zones. Then in May, 1945, a provisional Austrian government was extended limited power in the Russian Zone of occupation. After the general elections in November, 1945, an Austrian Federal Government was established which was eventually recognized in January, 1946, by the Allied Powers. However, the authority of this government is still limited in its legislative, administrative and judicial functions by the Allied Control Council in Vienna. Cardinal Innitzer, Archbishop of Vienna, has been reported as considering the Austrian Concordat as "still in effect"—cf. *THE JURIST*, VI (1946), 151. However, various reports indicate that the operation of the concordat is impeded in many ways by surviving German legislation. The Austrian government apparently shies away from raising the issue under prevailing conditions—cf. Hans Piteioni, "Catholics and Austrian Political Life"—*America*, LXXV, nr. 13 (June 29, 1946), 271-272; Alfred Missonig, "Fakultative oder obligatorische Zivilehe?"—*Österreichische Monatshefte*, I, nr. 12 (Oktober 1946), 509-512.

times and for particular nations, has been successful. It is not an exclusive solution. Its application has been often hailed, and often denounced.¹¹³ It is a means which could not be employed, indeed, in every case. But it is a unique means for it unites two completely different categories of authority in a common effort, by way of an international agreement.

WILLIBALD M. PLÖCHL

THE CATHOLIC UNIVERSITY OF AMERICA

¹¹³ Goethe's *Werke*, Reclam edition, vol. I, part 1, 480. *Zahme Xenien*, Neuntes Buch:

“Ist Konkordat und Kirchenplan
Nicht glücklich durchgeführt?”
Ja, fangt einmal mit Rom nur an,
Da seid ihr angeführt.

————— O —————

The N.C.W.C. News Service reports the ceremonies prescribed for the administration of the Sacrament of Confirmation by a priest to a Catholic in danger of death. They do not vary greatly from those found in the third section of the Instruction of the Sacred Congregation of the Sacraments of May 20, 1934 and in editions of the *Roman Ritual* subsequent to that date. The variations are in the interests of simplification. It is permitted to wear the stole without the surplice if the latter is not available. The following items are omitted: kneeling on the part of the sick person or the sponsor; the reading of the indult (but not the statement averring that the ordinary minister is a bishop and that the priest confirms in virtue of delegation given by the Holy See); and the binding of the forehead with linen. The cleansing water, bread and cotton are to be placed in a clean receptacle and carried to the church, where the latter are burned and placed together with the water in the sacarium. The Sacrament is not to be conferred in the presence of heretics or schismatics. The ceremonies end with the blessing. The sponsor places his right hand on the right shoulder of the sick person, whether the latter is an infant or an adult. The priest faces the sick person for the verse “*Ostende nobis*” etc. At the end of the prayer “*Adimple eum*”, the conclusion “*Per Dominum*” etc. is omitted. The singular is used throughout.

NOT ONE CENT FOR RELIGION

AN attack on the traditional policy of the Federal Government in aiding religion, branding it as the establishment of a church, is at the least unseasonable at a time when thoughtful and responsible men and women have become frightened at the secular invasion of our schools. Let the view of Nicholas Murray Butler speak for the rest in his condemnation of the neglect, if not the deliberate attempt at the destruction of religion in the public schools, as evidence of which he cited the example of the children in Chicago who had never heard of Bethlehem. Religion, he held, is part of our Christian civilization and culture and he maintained that the principle of separation of church and state has been twisted so as to "put the whole force of tax-supported education on the side of one element of the population, namely, that which is pagan and believes in no religion whatever".¹ "The school child," he said further, ". . . is entitled to receive . . . that particular form of religious instruction and training which his parents and natural guardians hold dear. This cannot be done if the program of the tax-supported schools is arranged on the theory that religion is to be excluded from the educational process or treated merely incidentally as an element in home life."²

The elimination of religion in tax-supported schools is precisely the aim of the secularist, an effect so vehemently deplored in the words of Nicholas Murray Butler. The point is, however, that the secularist must struggle for its elimination, and in that point there is implicit the further point that the

¹ *Report of the President of Columbia University for 1934*, (Columbia University Bulletin of Information. XXXV Series, No. 11, December 15, 1934), pp. 21, 22.

² *Ibid.*, pp. 24, 25.

tradition of the separation of church and state has even up to the present time not required the exclusion of religion from tax-supported schools. The history of the development of tax-supported schools amply confirms this conclusion. Adams has well said that the "common schools . . . sprang from sources higher than themselves, from lakes far back in historic mountains . . . the schools of Thebes, Memphis, Alexandria, the Graeco-Roman world, and from the fountain-heads of learning as the Benedictine monasteries, the cathedral schools, colleges, and universities of medieval Europe."³

The influence on the common school of the English models was the most marked. Not only in New England but throughout the colonies, the early grammar and endowed schools and colleges, the later academies, apprenticeship regulations, and the activities of missionary societies, reveal the palpable influence of educational customs of England modified by the American Environment.⁴ These characteristics were most significant in New England where the theocratic system affected the control of education, and the religious belief in universal education as a means of salvation led to compulsory education laws, using the apprenticeship system as one means of enforcing them.⁵ A new method of support was found in the compulsory rate, which however did not supplant other means of maintenance.⁶

This Puritan system developed most freely in Massachusetts and Connecticut. In Massachusetts, for instance, though the "town" school had existed prior to the enactment of the

³ Herbert B. Adams, *Thomas Jefferson and the University of Virginia*, (Washington, 1889, n. 2), pp. 34, 35.

⁴ Cf. Holtz, *A Study of the Moral and Religious Elements in American Secondary Education up to 1800*, (private edition, University of Chicago Library, 1917) pp. 1-9.

⁵ Cf. Seybolt, *Apprenticeship and Apprenticeship Education in Colonial New England and New York*, (Teachers College Contributions to Education, n. 85. New York: Columbia University, 1917), pp. 38, 39, 104, 105.

⁶ Gabel, *Public Funds for Church and Private Schools*, (Washington, D. C.: The Catholic University of America, 1937), p. 48.

law of 1647, this enactment made it compulsory for every town of fifty householders to appoint a teacher for reading and writing, and every town of a hundred families to establish a grammar school, allowing school support to be determined by majority vote of the local unit, as to whether it should be by tuition, or town "supply" or both.⁷ These schools were virtually Congregational parochial schools. The minister was the first teacher in Salem (1637) and this practice was followed in some towns until the law of 1701, which gave the local minister and the "ministers of the two next adjacent towns, or any two of them" the power of certifying prospective teachers.⁸ For more than a century and a half these teachers gave dogmatic religious instruction to their pupils without let or hindrance. That was the one object that the founders of these schools had in view.⁹ The "same identical system" continued for six generations, with a slow development from 1645 to 1833.¹⁰ New Hampshire followed the destinies of Massachusetts Bay even after it had attained separate status, though the private school was its principal educative agency throughout the colonial period, since the Massachusetts law of 1647 was probably not generally enforced and the grammar schools existed only on the statutes.¹¹ In New Haven and Connecticut there was the same close relation between the support of the school and of the church as in Massachusetts. The preamble to the act of 1742 declared that the college at New Haven and "inferior schools . . . in every town or parish . . . have . . . been very serviceable to promote useful learning and Christian knowledge, and, more especially, to train up a learned and orthodox ministry for the supply of our churches."¹² Indeed,

⁷ Gabel, *op. cit.*, p. 50.

⁸ Gabel, *op. cit.*, p. 55.

⁹ Cf. F. T. Carlton, *Economic Influence Upon Educational Progress in the United States 1820-1850*, (Madison: University of Wisconsin, 1906) pp. 9-22.

¹⁰ Gabel, *op. cit.*, p. 59, note.

¹¹ Gabel, *op. cit.*, p. 76, note.

¹² Gabel, *op. cit.*, p. 83, note.

from 1737 to 1740, the school fund apportioned among the parishes by the law of 1733 was allowed to be diverted by majority town or parish vote to the support of the established ministry.¹³ In Rhode Island, where education was entrusted to private schools, the Puritans saw only confusion and turmoil, and drew from this situation an argument for the superiority of their own system and the reason for its perpetuation.¹⁴

The Anglican, for whom Bible reading was not so imperative as for the Puritan and who regarded personal conduct as somewhat less of a public responsibility, followed the English apprenticeship system in the matter of education, but for him, as for the Puritan, the compulsory rate upon all was a means of church support, and school and ministry maintenance retained a very definite connection. Moreover, the colonies established as commercial enterprises were not so insistent in demanding or enforcing literacy as the leaders of the Puritan experiment. In Virginia there was no compulsory education legislation and no compulsory town school. As a consequence the use of public money for education was more or less restricted, only the apprenticeship school for the neglected and the poor sharing in such appropriations, except in rare cases in which poor children in private and parish schools were made beneficiaries.¹⁵ But due to the Establishment of the Church of England in the colony, whatever public support was given to education, meager though it was, was given to schools under the control of the Established Church, as were all schools in the colony. Even in the case of the Norfolk County-School, entrusted to civil authorities by the act of 1752, the publicly supported teacher was examined by the masters of the College of William and Mary and the ministers of the Elizabeth Parish.¹⁶

¹³ Gabel, *op. cit.*, p. 84.

¹⁴ Gabel, *op. cit.*, p. 89, note.

¹⁵ Gabel, *op. cit.*, p. 95.

¹⁶ Gabel, *op. cit.*, p. 97.

At the time when the American Union was formed, ten of the thirteen states retained, in one degree or another, their established churches. Six of them insisted on Protestantism, viz., New Hampshire, Connecticut, New Jersey, the two Carolinas, and Georgia. Two required only the Christian religion as the favored one, viz., Delaware and Maryland. Four, Pennsylvania, Delaware and the Carolinas required assent to the divine inspiration of the Bible. Two, Pennsylvania and South Carolina, demanded a belief in heaven and hell. Two, Pennsylvania and South Carolina, emphasized belief in one eternal God. One, Delaware, required assent to the doctrine of the Trinity. Of these, however, only five retained full establishment, viz., New Hampshire, Massachusetts, Connecticut, Maryland, and South Carolina.¹⁷ Virginia's disestablishment had occurred only two years before (1785). The established church of Connecticut existed until 1818, a full quarter of a century after the adoption of the Federal Constitution;¹⁸ that of Massachusetts, until 1833.¹⁹ In Pennsylvania, the constitution of 1790 abolished the religious test for office, but as a prerequisite to the freedom of religion conceded by the state there was added to "acknowledgment of Almighty God" a belief in "a future state of rewards and punishments",²⁰ a requirement still found in the fundamental law of the state. New Hampshire passed a "toleration act" in 1819 which gave freedom to all *Christian sects*; the restriction of office to Protestants was removed in 1877; but the provision that towns should make public provision "for the support and maintenance of public *Protestant* teachers of piety, religion . . ." (italics inserted) still remains entrenched in its constitution, and continuous attempts to remove it have been without avail, though a majority was obtained by its opponents in the last trial, but not the required two-third vote.²¹

¹⁷ Cobb, *The Rise of Religious Liberty in America*, (New York: The Macmillan Company, 1902), p. 507.

¹⁸ Cf. Cobb, *op. cit.*, pp. 512, 513.

¹⁹ Cf. Cobb, *op. cit.*, p. 515.

²⁰ Cf. Cobb, *loc. cit.*

²¹ Gabel, *op. cit.*, p. 150.

Indeed, the Northwest Ordinance, adopted May 20, 1785, by the Congress of the Confederation for disposing of lands in the Western territory, and the Ordinance for the government of the Northwest Territory adopted July 13, 1787, inaugurated the policy of land grants from the Federal Government for schools without distinction between "state" and "private" schools.²² The same lack of distinction is apparent in the earlier enabling acts of Congress, and it was only in 1889 that "sectarian or denominational" schools were excluded from the public support encouraged in them.²³ The language of the Ordinance for the government of the Northwest Territory, enacted in 1787, the same year as the Federal Constitutional Convention, is important. It declared: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."²⁴

This was the political attitude towards religion at the time of the adoption of the First Amendment to the Federal Constitution. Is it not apparent that in the First Amendment, the concept of the separation of church and state which the secularist alleges was responsible for its adoption, was far removed from the minds of all but a hopeless minority? Indeed, the very proposals in regard to religious liberty made in the state ratifying conventions make it clear that religious establishment was given a definition no greater than to signify the denial of religious liberty, and that the two members of the First Amendment referring to religious liberty are identical in import, neither one implying more than the other, but each explaining the other. How could states which retained established churches object to aiding religion, except to the extent

²² Cf. Zollman, *American Church Law*, (St. Paul: West Publishing Co., 1933), p. 87.

²³ Gabel, *op. cit.*, p. 174, note.

²⁴ *Journals of the American Congress From 1774 to 1788*, (Washington, 1823), IV, 753.

that they did not wish to have the Federal government interfering with their own determination of the kind of religion they wished to aid?²⁵

Indeed, it can even be said that the tax-supported school, as we know it, was, at least in its origin, a manifestation of the establishment of religion, in this case the Unitarian religion of Horace Mann. The movement led by him accomplished in a direct way what the bill introduced in Virginia "for establishing a provision for teachers of the Christian religion" attempted to do directly, in the case of Mann, however, to the exclusion of Catholics. The Virginia bill was supported by men of no less prestige than Washington, Patrick Henry, R. H. Lee, and Marshall. It provided that the state ought to give support to the general diffusion of Christianity but that the state ought not to give pre-eminence to anyone among differing sects. It provided for a general assessment by civil authority and allowed each ratepayer to indicate the church which should receive the amount of his tax. It was in the heat of a bitter political struggle over this bill that Madison wrote his *Memorial and Remonstrance*. Madison, with Jefferson, saw the bill as jeopardizing their aim for complete disestablishment of the Anglican Church. He saw groups of Presbyterians joining forces with the Episcopalians, "as ready to set up an establishment which is to take them in as they were to pull down that which is to take them out."²⁶ The bill was defeated in the Assembly by three votes; hardly an overwhelming victory: hardly proof of the overwhelming view which the people of the United States are said to have had regarding the "taking of alarm at the first experiment on our liberties" at the time of the adoption of the First Amendment to the Federal Constitution.²⁷

²⁵ Cf. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, (2. ed., 4 vols., Washington, 1854), I, pp. 319 sqq.

²⁶ *Letters and Other Writings of James Madison*, (Congressional ed., 4 vols., 1865), I, 144.

²⁷ Cf. Eckenrode, *Separation of Church and State in Virginia*, (1910), pp. 111-113.

In spite of the defeat of this bill in Virginia, in other states public provision continued to be made for religion and public support continued to be given to private and church schools, in some form or other, direct or indirect, explicit or implicit, through Constitutions or statutes or customs. Public support of Protestant schools, chiefly Congregational, continued in Massachusetts at least till the time of the disestablishment. The town school was supported in Connecticut under the control of the school society, enabled to levy taxes and distribute funds, with a proviso that a school society could by a two thirds vote apply its share to the support of the ministry, prorating it among the various religious societies of all denominations. In other states, such as New York and Pennsylvania, private and church schools were prevalent, but they were not excluded from participation in funds raised by the state for elementary education. The same may be said of the newly admitted States: Mississippi, Louisiana, Kentucky, Tennessee, Ohio, Indiana, Illinois, and Michigan.²⁸

Thus majority sentiment and actual practice during the generation following the adoption of the Federal Constitution sustained and supported the private or the church school, notwithstanding the projection during the period of several grandiose plans for national or state education. In the period following this (1820-1861), elementary education in New England, New York, Pennsylvania, New Jersey, Ohio, Michigan, and in the Northwest in general gradually succumbed to the idea of the so-called "non-sectarian" school, which was in reality the school of an established church, that of the Unitarian, the creed of which was "Faith in God as infinitely wise, true, and good; Faith in man as indefinitely improvable . . .; Faith in knowledge and teaching as conducing directly and powerfully to man's improvability; Faith in his own duty to glorify God by ministering to the improvability

²⁸ Cf. Gabel, *op. cit.*, pp. 192-262.

of man.”²⁹ While Mann fought for the exclusion of “sectarian” textbooks from the schools on the grounds of public peace and religious rights, and though he stressed the need of religious education, he was personally unsympathetic toward doctrinal religion, and the system of religious education which he preserved in the tax-supported schools was in harmony with his own beliefs and implied little if any sacrifice of his own religious conviction. The religious education he wanted in the tax-supported school was limited almost entirely to the reading of the King James Version of the Bible, or some other Protestant version. He held “that the Bible is a book which should be introduced into our schools. Protestant parents have an undoubted right to have their children read the Protestant version, and be instructed from it. If I had reason to suppose the candidate to be a Catholic, I should feel perfectly authorized to inquire, and to know, whether, if approved, he would use the Bible in school in such a way as the committee should direct; whether he would use the Protestant version for a Protestant school; and whether, also, he should not feel under obligation to abstain, on all occasions, from obtruding his peculiar or sectarian views upon the scholars.”³⁰ Thus Catholic doctrine is “sectarian”; Unitarian doctrine, “non-sectarian”.

The movement was indebted to other men of ability and zeal: Henry Barnard in Rhode Island and Connecticut, Samuel Lewis and Samuel Galloway in Ohio, Caleb Mills in Indiana, and Thaddeus Stevens in Pennsylvania. It was aided by the great influx of Irish and German Catholics among the immigrants of this period, which revived the old anti-Catholic animosities. The rivalries of the sects made a “non-sectarian” school seem a solution of their competitive ambi-

²⁹ This was the creed of Horace Mann; cf. Hinsdale, *Horace Mann and the Common School Revival in the United States*, (New York: Charles Scribner's Sons, 1937), p. 103.

³⁰ Letter to Rev. D. Wright, 1848—*Life of Horace Mann by his Wife*, (Boston, 1865), p. 253.

tions to control the public institutions for their own benefit. Moreover, many new sects akin to the tenets of Unitarianism in their belief grew up, attaching little importance to doctrine but emphasizing revivalist methods among the poor and uneducated.

Thus the movement, carrying with it the magic word "non-sectarian", fastened itself upon the public mind and was written into legislative acts and state constitutions. The word obscured the real issue between religious and non-religious liberty, until the minority became the majority which was quite willing to accept "non-sectarian" religion in tax-supported schools as in nowise contrary to the religious rights of the minority which rejected this shadowy form of Christianity but was obliged to contribute to its public propagation. The secularists remained few, for the majority wanted religion in the school; it still wanted state or public support for religion, to the denial of the religious liberty of the minority. This quasi-establishment of the "non-sectarian" religion proceeded everywhere to belittle private schools of all types, but especially what it chose to call "sectarian" schools, that is, schools teaching a rival religion and against these it mustered the forces of every wave of religious prejudice under the standard of the "little-red-school-house" to play up its own alleged indigenous character and the alleged alien character of the parochial school. This procedure never failed to revive anew the ancient fear of the great "enemy" whose endeavor to "capture the mind" of the country through its un-American parochial schools must be resisted, or at all events must never be aided by public money. Thus the cause of so-called "non-sectarian" education became a "holy cause", covered with the mantle of religious enthusiasm and revered as the great American institution. To criticise it or its officials required more boldness than to ridicule by cartoon or article other American institutions, whether of church or government, or even the highest public officials of the nation.³¹ That the

³¹ Cf. Gabel, *op. cit.*, pp. 265-301.

reading of the Bible constitutes "sectarian" rather than "non-sectarian" education, as contended by the propagators of the so-called "non-sectarian" tax-supported schools, is the contention of the courts of Wisconsin,³² Illinois,³³ Nebraska³⁴ and Louisiana.³⁵

But even though the so-called "non-sectarian" tax-supported school thus, through the interplay of opportune factors, came to enjoy a privileged place among religious schools, its advocates were displeased that both the State and the Federal governments continued to contribute rather insignificant sums to other religious schools, which they continuously belittled as "sectarian". This they decided must stop. Remarkably, they did not appeal to the First Amendment even in the case in which the grants made by the Federal Government were involved. Rather they sought a new amendment, and contrived to enlist the cooperation of the Republican Party, refuge of those political elements which had most strenuously propagated the so-called "non-sectarian" school and belittled the parochial school as alien. Grant, in his annual message of 1875, recommended an amendment to the Federal Constitution forbidding the teaching in any public schools of religious tenets (exclusive of doctrine they were to be, but not of Bible reading, that is, they were to remain religious schools) and further prohibiting "the granting of any school funds, or school taxes, or any part thereof, either by legislative, municipal, or other authority, for the benefit or in aid, directly or indirectly, of any religious sect or denomination."³⁶ One week after the submission of this message,

³² *State ex rel. Weiss v. District Board of School Dist. No. 8 of City of Edgerton*, 1890, 76 Wis. 177, 44 N.W. 967, 7 L.R.A. 330, 20 Am. St. Rep. 41.

³³ *People ex rel. v. Board of Education of Dist. 24*, 1910, 245 Ill. 334, 92 N.E. 251, 29 L.R.A. (N.S.) 442, 19 Ann. Cas. 220.

³⁴ *State ex rel. Freeman v. Scheve*, 1902, 65 Neb. 853, 91 N.W. 846, 93 N.W. 169, 59 L.R.A. 927.

³⁵ *Herold v. Parish Board of School Directors* (1915), 136 La. 1034, 68 So. 116.

³⁶ Cf. *Congressional Record*, vol. 4, pt. 1, p. 175.

James G. Blaine, then the leader of the House, introduced a resolution for a constitutional amendment which on August 4, 1876, was overwhelmingly passed by the House. It read as follows: "No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or denomination; nor shall any money so raised or lands so devoted be divided between religious sects or denominations."³⁷ The Tilden-Hayes campaign intervened. The Republican National Platform of 1876 called for an amendment to the Federal Constitution forbidding "the application of any public funds or property for the benefit of any school or institution under sectarian control." The Democratic National Platform was silent. When the constitutional amendment was voted on in the Senate in a greatly strengthened form, it resulted, on August 14, 1876, in a strictly partisan vote, all Republican Senators voting for it and all Democratic Senators voting against it, and it was lost because it had not received the necessary two thirds majority. And this proposed amendment according to House Document 551 of the 70th Congress, Second Session (§ 72), has been reintroduced twenty times but only once reported on by the committee to which it was referred and this report was that it should not pass. The defeated resolution reads as follows: "No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan or credit by or under the authority of, the United States, or any State, Territory, District or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-

³⁷ *Congressional Record*, vol. 4, pt. 6, p. 5190.

religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or antireligious sect, organization, or denomination shall be taught; and no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit; and no such appropriation or loan of credit shall be made to any religious or antireligious sect, organization or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution; and it shall not have the effect to impair rights of property already vested. Congress shall have power, by appropriate legislation, to provide for the prevention and punishment of violations of this article.”³⁸

The Federal Government did not feel restrained by the First Amendment from extending financial aid to church schools for Indian children. Indeed, the same President Grant in 1869 inaugurated a new policy to supplant the previous one of occasional direct and more commonly indirect assistance to these schools. He called upon the religious societies to cooperate with the government by appointing deserving and worthy men to serve as agents in the reservations and to establish schools. In 1896 the church schools were still receiving more than half a million dollars from the government.³⁹ Agitation against the system began in 1889, though the Catholic missionaries themselves had complained of the parcelling of the tribes among denominations without regard to the religious influences that had Christianized them. The agitation, however, of 1889 and the years subsequent aimed at making the Indian school the usual religious type known as “non-sectarian”. In answer to a Congressional inquiry, the Secretary of the Interior in 1894 made known the difficulty of abolishing the system

³⁸ *Congressional Record*, vol. 4, pt. 6, p. 5580; the record of the vote is found in the *Congresisonal Record*, vol. 4, pt. 6, p. 5595.

³⁹ Cf. Alvin Johnson, *The Legal Status of Church-State Relationships in the United States with Special Reference to the Public Schools*, (Minneapolis: University of Minnesota, 1934), p. 199.

at once. In the appropriation act of 1895, Congress directed the Secretary of the Interior to limit the contracts to the existing contract schools and to an extent not to exceed eighty per cent of the amount used for the fiscal year 1895. The amount was successively reduced until 1899 when it was declared to be "the final appropriation for sectarian schools."⁴⁰ The practice continued, however, of using "tribal" or "treaty" funds according to the Sioux Treaty of April 29, 1868 and the act of 1889.⁴¹ *The National League for the Protection of American Institutions*, which had used strong political influence to bring about the prohibition of government appropriations for Catholic Indian schools and to have clauses inserted in some State constitutions in conformity with its principles, made a determined effort to have Congress pass legislation forbidding also the use of tribal funds. Congress refused. In 1908 the Supreme Court upheld the right of the Indians to this use of their funds.⁴²

The Washington Secular League and certain Protestant denominations protested the use of the religious garb by Sisters in government schools and in 1912 the Commissioner of Indian Affairs issued a circular ordering the removal of denominational insignia from public class rooms and the laying aside of the religious garb. Secretary Fisher of the Department of the Interior revoked this order, and the revocation was later made permanent by President Taft. In explaining the ruling made by him, the Secretary declared that there was no statute against the wearing of the garb; that Indian regulations permitted the use of school buildings for religious service by any sect; *that the Constitution did not forbid appropriation for religious purposes but the establishment of a State Church and union of Church and State; and that this prohibition was not*

⁴⁰ Cf. 28 *Statutes at Large*, 311, 903, 904; 30 *Statutes at Large*, 942, Chap. CCCXXIV (March 1, 1899).

⁴¹ 15 *Statutes at Large*, 635, 637; 25 *Statutes at Large*, 888, 892, 894-896, cf. sec. 18: "Lands occupied for religious purposes".

⁴² *Quick Bear v. Leupp*, (1908), 210 U. S. 50.

violated by appropriations for religion since Congress supported chaplains in the Army and Navy, and appropriations for services rendered by persons wearing religious garb had been upheld by the Federal courts.⁴³

This historical summary makes it apparent how much value can be attributed to the contention of the secularist that aid to religion is in opposition to the traditional policy of the government of the United States or to the historical guarantee of the First Amendment. On the contrary, no policy of the government can be so well substantiated over the years up to the very present as that of recognizing the need of religion in education and of giving financial support to the supplying of that need. This policy has been opposed by a powerful minority throughout the whole history of the Republic. Though to its credit some might be disposed to attribute the entrenchment of a single type of religion in our tax-supported school, it has never been able to coerce the Federal government into accepting its principle that any aid to schools in which another type of religion is taught amounts to a union of Church and State.

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⁴³ Gabel, *op. cit.*, p. 531. Cf. *Bradfield v. Roberts*, 175 U. S. 291-300, 44 L.E. 168-171.

Cases and Studies

MASSES EX IUSTITIA?

Both the diocesan ordo and the synodal statutes of this diocese indicate that within the octave of the Commemoration of All the Faithful Departed the priests of the diocese are to offer two Masses: one for the deceased bishops, and the other for the deceased priests. Is the application of these Masses due in justice, so that a priest could not satisfy his obligation regarding either of them by means of a bination Mass? Is the obligation a personal one, or may a priest feel that he has at least substantially fulfilled his obligation when he has had these Masses offered and applied by someone else?

SPECULATOR

Can. 824, §1.—Secundum receptum et probatum Ecclesiae morem atque institutum, sacerdoti cuilibet Missam celebranti et applicanti licet eleemosynam seu stipendium recipere.

§2.—Quoties vero pluries in die celebrat, si unam Missam ex titulo iustitiae applicet, sacerdos, praeterquam in die Nativitatis Domini, pro alia eleemosynam recipere nequit, excepta aliqua retributione ex titulo extrinseco.

Benedictus XV, motu propr. *Quartus iam annus*, 9 maii 1918: "... Quoniam autem rerum omnium quibus haec tempora indigent, ea summa est, ut rursus concordia et tranquillitate patiatur humana societas, Nobis visum est praecipuum, sacros pastores, in praecipua quadam Ecclesiae solemnitate, universos Nobiscum divinum sacrificium in eam causam offerre. Itaque Motu proprio statuimus, ut die XXIX, proximi mensis iunii, natali Sanctorum Apostolorum Petri et Pauli, qui populi christiani praesidia sunt et firmamenta, quotquot ex officio Missam pro populo celebrare debent, eam celebrent secundum mentem quam diximus. Praeterea sciant ceteri, ex utroque Clero sacerdotes, fore Nobis gratissimum, si eadem die sacrum facientes suam quoque mentem Nostrae adiungere velint. Sic enim, toto catholicorum sacerdotum ordine, in quavis ora ac parte terrarum, una simul Nobiscum sacrificante, maior aderit spes a divina bonitate impetrandi, ut illud tandem efficiatur, quod cuique est optatissimum: *Iustitia et pax osculatae sunt*."—*Acta Apostolicae Sedis*, X (1918), 226-227.

S. Poenit. deer. 26 maii 1918: "Quum SSñus D. N. Motu Proprio *Quartus iam annus*, attenta circumstidentium malorum acerbitate, statuerit ut die XXIX proximi mensis iunii, natali SS. Apostolorum Petri et Pauli, omnes animarum pastores, quibus officium incumbit missam *pro populo* celebrandi, eam cum Ipso offerant ad divinam maiestatem propitiandam; et idipsum ceteri ex

utroque clero facere si velint gratissimum sibi fore enuntiaverit; supplices preces exhibitae fuerunt pro iis sacerdotibus, qui forte ob inceptum *tricenarium Gregorianum* vel ob aliud iam susceptum onus, impediuntur quominus pientissimis Sanctitatis Suae votis, prout optarent, obsecudent.

Ne quis igitur propter eiusmodi impedimenta a tam insigni pietatis officio abstinere debeat invitus, dum tanta premit calamitas, atque adeo singularis urget necessitas supplicandi, haec S. Poenitentiaria, de speciali et expressa Apostolica Auctoritate, indulget ut omnes et singuli sacerdotes, qui obligationem celebrandi *Missas* quas vocant *Gregorianas* susceperint, possint ea die Sacrum facere secundum mentem Summi Pontificis, quin inceptum tricenarium exinde intermissum censeatur, dummodo postea continenter tricesimum missarum numerum expleant. Praeterea eadem S. Poenitentiaria de specialissimo mandato Sanctitatis Suae, supradictis precibus benigne annuentis, indulget ut quotquot tenentur onere applicandi ipsa die missam iuxta peculiare fundamentum leges, valeant ad praedictum finem eam respective per se vel per alios intra hebdomadam celebrare. Contrariis quibuscumque non obstantibus.”—AAS, X (1918), 255.

S.C.C., *Viglevanen*. (Missae binatae ac pro populo), 8 maii 1920: “I. An loci ordinarius, vi indulti apostolici, adigere valeat presbyteros ut missam binatam vel pro populo dispensatam applicent in favorem pie causae. II. An tolerari possit praxis exigendi favore causae pie eleemosynam taxae dioecesanae solummodo, relicto reliquo triplicis generis capellaniae redditu sacerdoti ex indulto apostolico missam iteranti vel missam pro populo dispensatam celebranti in casu.

Ad I: *Affirmative*.

Ad II: Reformato dubio in hanc formulam “An tolerari possit quod favore Causae Piae exigatur eleemosyna taxae dioecesanae dumtaxat, relicto capellaniae redditu taxam excedente sacerdoti ex Apostolico indulto Missam iteranti, vel pro populo dispensatam celebranti, in casu.”

Si legitime sit designata eleemosyna, quum ea tota cedere debeat favore Causae Piae: *Negative*, salva tamen Ordinarii facultate aliquid assignandi sacerdoti celebranti, ratione incommodi vel laboris;

Si vero eleemosyna non sit legitime statuta: *Affirmative*; seu cedere in casu favore Causae Piae dumtaxat eleemosynam taxae dioecesanae, facta item Ordinario facultate aliquid tribuendi eidem sacerdoti celebranti, ratione incommodi vel laboris.

Synopsis disceptationis.—“. . . Minus quoque officit quod opponitur, permissionem applicandi, in casu, non dari propter privatam sacerdotis utilitatem, sed propter publicam causam. Nonne enim in casu publica causa, et quidem Supremae Auctoritati comperta ab Eoque approbata subest, nempe subveniendi Seminarii necessitatibus? Huius immo publicae causae utilitas, adeo peculiaris, in casu, comperta est, ut *ipsi cedere* debuerit communis utilitas procurandi per Missae consuetam applicationem populi salutem; prout haec, quod ex adverso recolitur, cessit anno 1918 necessitati impetrandi finem atrocissime tunc saevientis belli. Ab inobedientiae igitur nota nullo modo excusandi videntur hi sacerdotes, qui suum iudicium iudicio Supremi Pastoris anteferentes, magis necessarium arbitrentur, quod ille in praesenti postponendum esse indicat.”—AAS, XII (1920), 536-542.

The ruling of the diocesan statute as mentioned in the query seems to be but an adaptation, for the priests throughout the diocese, of the ruling contained in the *Caeremoniale Episcoporum* (Lib. II, cap. 37, § 1), which specifies for the bishop the annual celebration in the cathedral—within the Octave of All Souls' Day—of a Mass for all the deceased bishops and canons of the diocese. While the *Caeremoniale Episcoporum* calls for the celebration of a single Mass, the diocesan statute calls for the celebration of two Masses, one for the deceased bishops, and the other for the deceased priests (the latter being specified apparently in place of the canons of whom the *Caeremoniale* makes mention).

That there exists a serious obligation on the part of the bishop annually to celebrate a Mass for the deceased bishops and canons is established beyond all doubt through a reply of the Sacred Congregation of Rites to the Diocese of Haarlem on January 17, 1887.¹ But no indication was given in the reply that the obligation was to be considered as deriving from strict justice. Hence, even by analogy, it cannot be assumed that the obligation imposed in the diocesan statute is meant to be one that binds in strict justice.

Moreover, while the obligation is imposed upon all the priests of the diocese, the primary purpose of the statute seems to be that Masses be said to the number of the priests in the diocese rather than that each priest must consider the application of the Masses as an inalienable personal obligation. Accordingly it seems that a priest fulfills his obligation fundamentally even apart from a personal celebration of the Masses, as long as he has engaged someone else to offer the Masses. Similarly the fact that the Octave of All Souls' Day is indicated as the time within which the Masses are to be offered seems hardly to imply that this condition is set as essential to the fulfillment of the obligation. That specification seems rather to be merely directive in its intent. If, then, a priest were confronted with the alternative choice of offering the Masses personally outside the octave, or of having them offered by someone during the octave, the selection of the latter alternative may well be regarded as corresponding more closely to the fulfillment of the obligation as contemplated in the statute.

If an obligation is to bind in justice it must derive either from a contract or at least from a quasi-contract. Neither the one nor the

¹ *Decreta Authentica*, n. 3669, ad II.

other appears to come in question in the obligation here considered. Consequently the obligation which rests upon the priests of the diocese, though it may not lightly be repudiated, nevertheless does not appear to bind them in strict justice. It follows accordingly that the Masses may be offered by the priests when they binate, for it is only when the celebration of a Mass is due in strict justice that a priest may not receive a stipend for the other of the two Masses celebrated by him. Since the Masses which are to be offered for the deceased bishops and the deceased priests are not stipend Masses, and since their celebration appears not to be due in strict justice, the priests may well fulfill their obligation regarding these Masses by celebrating them as bination Masses, even when they have received a stipend for the other Mass, or have offered it as a *Missa pro populo*.

When Pope Benedict XV called for the celebration of a Mass according to his intention on June 29, 1918, that is, on the Feast of the Apostles Peter and Paul, he was careful to impose the obligation solely on pastors, and then only by way of substitution for the regularly called for *Missa pro populo*. Thus he made no demand upon them to sacrifice the opportunity of receiving a stipend, since the regular application of the *Missa pro populo* would itself have excluded that in the absence of the newly imposed obligation.

With reference to priests who were not pastors the Holy Father did not impose any obligation at all; rather, he simply indicated to them that it would indeed be most acceptable to him if they also offered their Masses for his intention on that day, and the Sacred Penitentiary, with the Supreme Pontiff's specific approval, made it plain that any priest's previous acceptance of Gregorian Masses or any current obligation arising out of founded Masses would not stand in the way of his correspondence to the Holy Father's ardently expressed desire that on the designated day all priests alike might offer their Masses in common unison for the intention so near to his and everyone's heart, namely, "that justice and peace might embrace."

The reply of the Sacred Congregation of the Council to the Diocese of Vigevano, as above indicated, clearly manifests that, if the bishop could make special demands upon the priests of his diocese to relinquish the stipends connected with the Masses offered by them, it was precisely for the reason that he acted with the supreme authority of the Holy See. Hence it is not to be expected that he

could do so apart from such a special authorization. Yet, if the Masses which the priests are obliged to offer in accordance with the diocesan statute were Masses whose celebration is due in strict justice, then the synodal statute would in effect preclude the acceptance of a stipend on the day these Masses are celebrated, which in turn would be equivalent to asking the priests to relinquish the stipend.

In summary, then, it appears that the Mass obligations as imposed in the synodal statute do not imply any duty in strict justice for the following reasons: 1) Their celebration is not conditioned by any contract or quasi-contract; 2) analogously the nature of the obligation seems to be patterned upon that which is inherent in the bishop's annual celebration of a Mass for the deceased bishops and canons, which obligation is nowhere designated as one that arises from strict justice; and 3) it is not to be expected that a bishop would intend the obligation to bind in strict justice, since even the Holy See makes such a demand only in most extraordinary circumstances.

THE PAROCHIAL VICAR SUBSTITUTE AND THE *MISSA PRO POPULO*

When a parochial substitute vicar is appointed he holds the place of the pastor in everything that pertains to the parochial care of souls, as long as the local ordinary or the pastor has not excepted anything from the official sphere of his parochial activity. Does this imply that the substitute vicar has also the obligation of offering the *Missa pro populo* during the pastor's absence if the substitute has been left in full charge?

PERSCRUTATOR

Can. 474.—Vicarius substitutus qui constituitur ad normam can. 465, §§ 4, 5 et can. 1923, § 2, locum parochi tenet in omnibus quae ad curam animarum spectant, nisi Ordinarius loci vel parochus aliquid exceperint.

Can. 466, § 1.—Applicandae Missae pro populo obligatione tenentur parochus ad normam can. 339, quasi-parochus ad normam can. 306.

§ 4.—Parochus Missam pro populo applicandam celebret in ecclesia paroeiali, nisi rerum adiuncta Missam alibi celebrandam exigant aut suadeant.

§ 5.—Legitime absens parochus potest Missam pro populo applicare vel ipse per se in loco quo degit, vel per sacerdotem qui eius vices gerat in paroeia.

Can. 339, § 4.—Episcopus Missam pro populo diebus supra indicatis [omnibus dominicis aliisque festis diebus de praecepto, etiam suppressis] per se ipse applicare debet; si ab eius celebratione legitime impediatur, statis diebus applicet per alium; si neque id praestare possit, quamprimum vel per se ipse vel per alium applicet alia die.

From canon 339, § 4, it is manifest that the obligation of offering the *Missa pro populo* is primarily a personal obligation on the part of the residential ordinary. Inasmuch as the obligation on the part of the pastor is equated with that of the residential ordinary through the reference which canon 466, § 1, makes to canon 339, it is equally evident that the pastor's like obligation is primarily a personal one. It is only secondarily that the obligation is constituted also as a local obligation. But from either viewpoint the dominant note in the obligation is this, namely, that its fulfillment is connected with a fixed day. Accordingly, if for the fulfillment of the obligation there remains exclusively a choice between a personal non-local fulfillment, on the one hand, which must deviate from the assigned day, and a local non-personal fulfillment, on the other hand, which alone can adhere to the assigned day, it is the latter of these that should be accepted as preferable. On the contrary, if the obligation can be fulfilled on the appointed day, so that the choice simply remains between the absent pastor's personal fulfillment and the present substitute's local fulfillment, then the former of these appears as a preferable way for compliance with the law.

Canon 474 could be understood in its "*nisi*" clause as implying one or the other of two eventualities. It could mean that the law of the Code supplies all pastoral power to the properly constituted substitute as long as the local ordinary or the pastor has not excepted any right or duty from the sphere of his office, or it could imply that the substitute will have only such powers as are given to him, but that in the event of silence, both on the part of the local ordinary and of the pastor, his powers will, by force of the law in the Code, extend to the full and entire care of souls in the parish. In practical consequence, however, it seems irrelevant which of the two possible meanings be adopted. In actual fact the substitute will have full parochial power whenever no previous limitation has been set, regardless of whether that limitation be considered as anticipating the action of the law of the Code or as modifying it by way of subsequent exception.

The real reason why the substitute is not bound to the application of the *Missa pro populo*, even when no limitation has been set in the sphere of his parochial office, is to be sought in the fact that this particular obligation is invested with a specifically personal note that involves the pastor. The absent pastor is indeed at liberty to

take advantage of the ruling of canon 466, § 5, which allows him to satisfy his pastoral obligation of the *Missa pro populo* through the priest who has taken his place in the parish. But the fact that he may do so does not in any way imply that the obligation is a local one for the substitute, rather than a personal one for the pastor.

If the substitute is to be held responsible for the application of the *Missa pro populo*, then the responsibility must have its origin in the local ordinary's or the pastor's express instruction to that effect. It is immaterial whether the instruction be explicit or implicit in character, as long only as it is definitely express in its demand. If a pastor were, for the time of his absence, to relinquish his full salary to the substitute, and simultaneously instructed him in consideration thereof to assume all the pastoral obligations, then it appears that the pastor has at least implicitly made the substitute responsible also for the particular obligation of the *Missa pro populo*.

The simple fact that he has been left in full charge does not imply that the substitute has vicariously acquired also the obligation of offering the *Missa pro populo*. Added mention of that obligation would still be called for. But when by instruction from the local ordinary or from the pastor himself that obligation is implicitly included in the sphere of activities committed to him, then just as surely the substitute will also be responsible for the application of the *Missa pro populo*. Thus it appears evident that the substitute need never assume that he is held to the obligation in question until he has been positively informed to that effect, whether it be through an explicit order, or whether it be through an implicit command.

CLEMENT V. BASTNAGEL

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ANONYMOUS DENUNCIATIONS

Anonymous letters accusing a certain pastor of Diocese X come regularly to the Chancery Office. What weight is to be given to such letters, and what is to be done with them?

LECTOR

Accusations (*denunciaciones*) are to be made in writing. This writing should ordinarily be done by the one making the accusation who should also sign his name to it.¹ There is provision, however, in Canon 1936 for even an oral denunciation. In such a

¹ Canon 1936.

case the person may speak to the Bishop, the Chancellor, a Rural Dean, or one of the pastors. These latter persons, then, who have seen and heard the complaining witness are required to put the accusation in writing and transmit it to the Bishop.

The accusation itself may come from any one of the members of the Catholic Church. The reason behind it may be to get satisfaction, reparation of the damage inflicted upon him, or it may be zeal for justice in repairing some scandal or some wrong.²

There is even an obligation to make the accusation when one is bound by law to do so, whether that law be general for all or particular for the accuser. This same obligation may arise from the natural law if there is some danger to the faith or to religion involved. The natural law obliges to this likewise if there is some imminent public danger other than that mentioned above.³

It is to be remembered, however, that the one who makes the accusation is bound to supply the *Promotor Iustitiae* of the diocese with all the assistance and material aids which will have to be used in proving the charge.⁴

Since this is the case, it is quite clear that an anonymous letter accusing the pastor is of no real value. In the first place, the writer of the letter is unknown and hence cannot be called upon later to testify against the accused. Another consequence of the anonymity is that the *Promotor* will not be able to call upon the writer to supply him with the assistance and material aids which he will need to prove the charge.

It is for this reason, among others, that Canon 1645, § 4 provides that anonymous letters which add nothing to the merits of the case are to be destroyed, as are those which are signed but are definitely calumnious.

The letters in question may appear to originate in one source or in many. If they originate in one source, it would seem that they can be destroyed because they offer nothing for the *Promotor* to use in bringing the accused to trial. If, on the other hand, the letters appear to originate in many sources, it is possible that there is something behind them beyond mere spite or a queer quirk.

² Canon 1935, § 1.

³ Canon 1935, § 2.

⁴ Canon 1937.

If the variety of origin indicates a rumor existing in the minds of several persons concerning the accused there may be an occasion to put an *inquisitor* on the case to find out whether there is any foundation for the rumor and if so what.⁵ As a rule this *inquisitor* will be chosen from the synodal judges⁶ to investigate this one particular case after he has taken the oaths of office (Canon 1941, §§ 1-2). He will not, of course, be the judge at the trial, if the case ever comes to trial.⁷

The Bishop will not even appoint the *inquisitor* unless he feels there is sufficient reason to do so. In making up his mind he will disregard accusations which come from an open enemy of the accused, or from some person of no account. Anonymous accusations, too, will be disregarded unless they are made under such circumstances and combined with such other elements as to make the charge probable.⁸

At all times the *inquisitor* will observe secrecy so that if there is any wrong done it will not be broadcast to those who do not know of it, and he will make certain that the good name of the accused is in no wise tarnished during the course of his investigations.⁹ If he finds that there is a wrong done and that there will be sufficient evidence to proceed against the wrongdoer, the matter can be brought into open court where the accused can defend himself. Otherwise, like the grand jury, he will fail to return an indictment.

To conclude, it would seem that the anonymous letters in question should be scrutinized to see whether they appear to originate in one source or in many. If the former is the case, then the letters can be destroyed as useless, for they offer no assistance to the *Promotor*. If the latter is the case, then it will be for the Bishop to decide whether there is sufficient reason to appoint an *inquisitor* to investigate and report. If the report gives the *Promotor* enough to go on¹⁰ it will be for the Bishop to decide on the next step.¹¹ If

⁵ Canon 1939, § 1.

⁶ Canon 1940.

⁷ Canon 1941, § 1.

⁸ Canon 1942.

⁹ Canon 1943.

¹⁰ Canon 1945.

¹¹ Canon 1946, § 2, 3°.

there is no case, that will be noted on the report which is filed.¹² If there is only a partial case, the report will be filed for future reference.¹³

It is possible, of course, that the *inquisitor* will find that the letters are part of a campaign of defamation against the pastor, and who is conducting this campaign. In such a case, if it is a question of serious defamation of this cleric, a criminal action against the wrongdoer can be instituted *ex officio* by the *Promotor*.¹⁴

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EX-RELIGIOUS IN THE DIOCESAN CURIA

In defense against the attack upon my appointment as notary of the diocesan tribunal because I am alleged to be an ex-religious, I observe that though I was professed of temporary vows, at their expiration, while I was still in the second class of theology, before I was admitted to tonsure, I left the community. I had been married twice before entering the community: to two sisters. The first wife died in an accident the year after our marriage; and the second by pneumonia, two years after our marriage. Naturally I was granted the necessary dispensation before my promotion to the priesthood, after I left the community.

PERITUS

The temporary profession involved in this case was not invalid because of the irregularity caused by the fact that he who made it had twice been married.¹ The admission of the irregular candidate, destined for the priesthood, into the novitiate was unlawful but not invalid.² Canon 642 forbids ex-religious to hold any office in the diocesan curia.³ Authors, however, restrict this prohibition to re-

¹² Canon 1946, § 2, 1°.

¹³ Canon 1946, § 2, 2°.

¹⁴ Canon 1938, § 2.

¹ Canon 984. Sunt irregulares ex defectu: . . . 4° Bigami, qui nempe duo vel plura matrimonia valida successive contraxerunt; . . .

² Canon 542. . . 2° Illicite, sed valide admittuntur: . . . Ad sacerdotium in religione destinati, a quo tamen removeantur irregularitate aliove canonico impedimento; . . .

³ Canon 642, § 1. Quilibet professus, ad saeculum regressus, licet valeat, ad normam can. 641, sacros ordines exercere, prohibetur tamen sine novo et speciali Sanctae Sedis indulto: . . . 3° Quocunque officio vel munere in Curiis episcopalibus . . .

ligious who were professed of perpetual vows and who were in sacred orders when they obtained a rescript of secularization (not ex-claustration). Those in temporary vows are included by the authors in the prohibition only if they obtained a dispensation from the latter, and did not wait for their expiration.⁴

The notary in question may therefore continue in office.

AGE FOR CONFIRMATION

The father of a child who has just made his first Holy Communion approached me the other day and asked that I be gracious enough to admit his child to the class preparing for the Sacrament of Confirmation.

I explained to him that children were not to be admitted to the class until they had reached the age of twelve years.

He argued that such a rule was against the divine law. He further pointed out that it seemed absurd that a child should be admitted to Holy Communion without having first been confirmed.

The man is a lawyer, influential in my parish. I do not know how to handle him.

MANDATARIUS

It seems difficult to understand why children under the age of twelve are refused admission to the class preparing for Confirmation, since canon 788 places the age at about seven, while providing that in danger of death or for other grave reason this Sacrament may be conferred to one under that age.¹ The II Plenary Council of Baltimore, repeating the decree of the I Provincial Council of Baltimore, simply forbids the administration of this Sacrament to those under seven years of age, except for special reasons, *v.g.* in danger of death.²

In regard to the relation of the age for the reception of the Sacrament of Confirmation and the Sacrament of Holy Communion, the Sacred Congregation of the Sacraments, in a reply of June 30, 1932,³

⁴ Cf. Coronata, *Institutiones Iuris Canonici* (Taurini: Marietti, 1939), I, 859, notes; Vermeersch-Creusen, *Epitome Iuris Canonici* (2. ed., Mechliniae-Romae: Dessain, 1924) I, n. 742. The latter say that the prohibition does not invalidate the appointment.

¹ Canon 788. *Licet sacramenti confirmationis administratio convenienter in Ecclesia Latina differatur ad septimum circiter aetatis annum, nihilominus etiam antea conferri potest, si infans in mortis periculo sit constitutus, vel ministro id expedire ob iustas et graves causas videatur.*

² *Acta*, n. 252.

³ AAS, XXIV (1932), 271; Bouscaren, *The Canon Law Digest*, I, 348).

declared that it was more in conformity with the nature and the effects of the Sacrament of Confirmation that children should not receive their first Holy Communion until they had received the Sacrament of Confirmation, but that those who had received their first Holy Communion were not to be refused admission to further frequentation of this Sacrament simply because they were not confirmed.

The lawyer's contention, then, is in harmony with the mind of the Holy See, but it is an exaggeration to say that it is "absurd" to admit the child to first Holy Communion before he receives the Sacrament of Confirmation. Since the obligation to receive the Sacrament of Confirmation arises from the divine law, the refusal to admit a child to its reception at the age indicated by the Church seems an offense against the divine law, not to mention the obligation of justice arising under the divine natural law on the basis of the parochial office.

CEREMONIES OF CONFIRMATION FOR EXTRAORDINARY MINISTER

I note that in virtue of an indult of the Sacred Congregation of the Sacraments of September 14, 1946, effective January 1, 1947, priests in care of souls may administer the Sacrament of Confirmation to those in danger of death, acting as extraordinary ministers of this Sacrament. What procedure shall a priest follow in thus acting as extraordinary minister?

TIRO

The rite is given in the third section of the Instruction of the Sacred Congregation of the Sacraments issued May 20, 1934.¹ It may also be found in subsequent editions of the *Roman Ritual*.

For the information of the priest, the Instruction, in its second section, repeats almost *verbatim* the following canons: 732, 734, 766, 781, 782, 784-791, 793-800, 1079. In the case of canon 781, the Instruction adds that it is never lawful to administer the Sacrament of Confirmation without Chrism or to receive Chrism from a heretical or a schismatic bishop. The Instruction, in connection with canon 786, emphasizes the importance of sufficient knowledge on the part of the recipient of the nature, dignity, and effects of the Sacrament and of the dispositions necessary for its worthy recep-

¹ AAS, XXVII (1935), 19. News reports state, however, that the recent decree embodies prescriptions as to the rite to be used. Cf. p. 44 *supra*.

tion. It recommends, in accordance with the ancient practice of the Church, that the recipients of the Sacrament be fasting.²

VALUE OF BAPTISMAL REGISTER AS PROOF OF LEGITIMACY

Martin, a young man of my parish, adopted for the first year of theology, discovered when he went for his baptismal certificate that he was born eleven months after the death of the man whom he has always regarded as his father, Michael; that is he finds that he is really a year younger than his mother and relatives told him he was. Michael is written in the baptismal register as his father. His mother has never married since the death of the aforesaid Michael, her husband.

INSAURATOR

A baptismal register is a public document,¹ but it affords proof only of that which is directly and principally recorded in it.² Now the legitimacy of the youth in question is not a matter that is directly and principally recorded in the register of baptism. Therefore the fact that Michael is described in the baptismal register as his father affords no proof that Michael is so. No doubt of fact as to the irregularity can thus be established in virtue of the baptismal record, so as to permit the local Ordinary to dispense.³ On the other hand, the fact that more than three hundred days elapsed between the death of his father and his birth deprives him of the presumption of legitimacy of canon 1115, §2. That means that the burden of proof is cast on him of showing through expert testimony that the condition of his mother delayed his birth to this extraordinary degree. Until he does so, in the contemplation of the law, there exists moral certainty that he is illegitimate. Since reasonable doubt is excluded by moral certainty, the local Ordinary could not rely on canon 15 to grant a dispensation from the irregularity arising under canon 984, 1°.

² Cf. Bouscaren, *The Canon Law Digest*, I, 187, 188.

¹ Canon 1813, § 1, 4°.

² Canon 1816. Documenta publica fidem faciunt de iis quae directe et principaliter in eisdem affirmantur.

³ Canon 15. Leges, etiam irritantes et inhabilitantes, in dubio iuris non urgent; in dubio autem facti potest Ordinarius in eis dispensare, dummodo agatur de legibus in quibus Romanus Pontifex dispensare solet.

DISPENSATION FROM RELIGIOUS DOWRY

I have been asked by the Superioress of the community where I am chaplain to request approval of a change in the constitutions permitting the superioress to admit candidates who have no dowry. The number of applicants who have no dowry is so great that it necessitates writing to the Ordinary for a dispensation in almost every instance. The community is one of diocesan approval and the mother house is in one diocese, while it has two houses in the adjacent diocese.

BENEVOLENS

The Code requires a dowry only in institutes of women of solemn vows, though it permits institutes of women of simple vows to provide for a dowry in their constitutions.¹ In the latter institutes the name dowry is sometimes misapplied to a small sum of money which the candidate presents to the institute for use in defraying the expenses of the postulancy and the novitiate. Obviously since the institute and its constitutions do not contemplate the preservation of this sum as a capital sum the income of which is to support the professed religious, it is not a dowry in the canonical sense, and there should be no trouble about changing the constitutions to permit the superioress to waive the amount, provided the two local Ordinaries concur.² This action of the superioress would obviously not be a dispensation in the strict sense, since she does not possess jurisdiction, but the possession of dominative power is sufficient to enable her to exercise that authority. Indeed, Coronata states that the superioress may exempt from observance of the constitutions in particular cases, implying that she enjoys this authority even though the constitutions do not expressly give it to her.³

¹ Canon 547, § 1. In monasteriis monialium postulans afferat dotem in constitutionibus statutam aut legitima consuetudine determinatam.

§ 3. In religionibus votorum simplicium, quod ad religiosarum dotem pertinet, standum constitutionibus.

² Canon 495, § 2. Si ad dioeceses alias eam propagari accidat [institutum *iuris dioecesanum*], nihil de ipsius legibus mutari liceat, nisi de consensu singulorum Ordinariorum quorum in dioecesibus aedes habeat, salvis iis quae, ad normam can. 492, § 1, Sedi Apostolicae fuere subiecta. The reservation in the latter clause pertains to those fundamental characteristics of the institute which the local Ordinary is obliged to describe to the Sacred Congregation in seeking the *nihil obstat* for the foundation of the institute, such as the name, the habit, the purpose, the means of support—cf. *Normae* of 1921, §§ 3, 4—AAS, XIII (1921), 313.

³ Coronata, *Institutiones Iuris Canonici*, I, 647.

She would not have this authority, however, in regard to a strictly canonical dowry, unless it were specifically given her in the constitutions, for canon 547, § 4 forbids the waiving of the dowry in an institute of diocesan approval without the permission of the local Ordinary.⁴ This permission could be incorporated into the constitutions themselves, authorizing action on the part of the superioress.

EX-COMMUNIST IN RELIGIOUS INSTITUTE

The superioress at the mother house where I am chaplain, is worried about the status of one of the novices who has already completed six months of the canonical year. She has discovered that Sister belonged to the communist party while she was a non-Catholic and a student at a secular university. She seems to have written one or two articles for a communist journal even after her conversion, while she was a student at a college, from whose dean testimonial letters were not requested at the time the novice was admitted. The novice was born of Protestant parents.

INTERCESSOR

According to canon 542, 1°, one who belonged to a non-Catholic sect cannot be admitted into the novitiate of a religious community. A non-Catholic sect was said by the Pontifical Commission for the Interpretation of the Canons of the Code to include an atheistic sect as regards all legal effects, even those which concern sacred ordination and marriage.¹ However, the same Commission had earlier declared that in regard to the exclusion contained in canon 542, 1° only those were involved who had apostatized from the faith before joining the non-Catholic sect.² Of course the constitutions might forbid the admission of anyone who had been a heretic or the child of a heretic, but in this case the higher superiors could waive the impediment in particular cases.³

The fact that the novice wrote for a communist periodical did not constitute a re-alignment with the atheistic sect. Though testi-

⁴ Can. 547, § 4. Dos praescripta condonari ex toto vel ex parte nequit sine indulto Sanctae Sedis, si agatur de religione iuris pontificii; sine venia Ordinarii loci, si de religione iuris dioecesiani.

¹ Code Commission, 30 iul. 1934—AAS, XXVI (1934), 494; Bouscaren, *The Canon Law Digest*, II, 286.

² Code Commission, 16 oct. 1919, n. 7—AAS, XI (1919), 477; Bouscaren, *The Canon Law Digest*, I, 298.

³ Coronata, *Institutiones Iuris Canonici*, I, 709.

monials were not obtained from the college where she was studying when she wrote these articles after her conversion, it seems morally certain that she did not even defend atheism in the articles. But even if she did, that would not constitute a joining of the atheistic sect, unless she defended it precisely as a tenet of the sect of communism, and it is the joining of the sect that invalidates the entrance into the novitiate. The admission without proper testimonial letters as required in canon 544, § 7 would make the entrance into the novitiate unlawful, but not invalid. Moreover, testimonial letters from the college seem not to be required under strict and specific law as contained in canon 544, § 3, the words of which refer probably only to colleges in which religious are trained.⁴

In the absence of special provisions in the particular constitutions of the institute, it should be held that the six months of this novice's novitiate have been validly spent.

FREQUENCY OF RURAL DEAN'S REPORT

A vicar forane in this diocese refuses to send to the chancery a report of his deanery every quarter stating that he is required by the Code to make only an annual report. If he is right, he should not be removed from office. Can his position be sustained?

IUSTUS

Canon 449 requires the report of the vicar forane to be made *at least* once a year.¹ Therefore particular laws in the decrees of the Councils of Baltimore are not opposed to the legislation of the Code, if they require a report more frequently. As a matter of fact the III Plenary Council does indicate that the report should be made several times in the year (*aliquoties*).² Of course, from such a decree the local Ordinary may dispense in a particular case and for a justifying reason.³

On the other hand it seems to have been the intention of the Fathers of the Council to leave the bishops free to appoint vicars

⁴ Cf. Vermeersch-Creusen, *Epitome Iuris Canonici*, I, n. 646.

¹ Canon 449. Saltem semel in anno vicarius foraneus proprii vicariatus rationem reddere debet Ordinario loci, . . .

² *Acta*, n. 28: Eorum apud nos munus, praeter alia a Concilio Baltimorensi [praevio] indicata, . . . esset . . . aliquoties per annum Episcopo referre quae in ipsorum districtu notabilia contingunt.

³ Can. 291, § 2. Decreta Concilii plenarii et provincialis promulgata obligant in suo cuiusque territorio universo, nec Ordinarii locorum ab iisdem dispensare possunt, nisi in casibus particularibus et iusta de causa.

forane, though they were obviously in favor of their appointment. Of course, no such freedom exists under the Code, which makes the appointment a matter of obligation.⁴

Moreover, the Fathers of the Council of Baltimore in speaking of the duties of the vicars forane use the subjunctive mood: "*eorum apud nos munus . . . esset*", as if they were making the duty conditional first of all on the appointment of the vicars forane, for if there is no incumbent of a post, there are no duties that can be assigned him; but conditional also on the command of the bishop. It seems fair to conclude that the intention of the Fathers was not to bind the bishops to require a report of the vicars forane several times a year, but to suggest that they do so. However, once such a requirement is imposed by the bishop, it seems to enjoy not only his own authority, and it is to be conceded that a diocesan statute would not conflict with either the Code or the legislation of the Council of Baltimore, but also the authority of the Plenary Council itself, though not to the extent that the bishop could not repeal it.

In any event, a bishop may certainly require a more frequent report than an annual one; indeed, the III Plenary Council strongly suggests that he should. If he does require it, then a vicar forane must obey. If he refuses obedience, adequate justifying cause exists for his removal from office by the *bishop*.⁵

CONFIRMATION OF AN EXTRA-DIOCESAN CATHOLIC

About a week after Miss X was received into the Church, she called on the bishop of our neighboring diocese and asked for immediate Confirmation in the Cathedral, alleging that the Holy Spirit had commanded her to request this of him that she might devote herself to Catholic Action at once through the ministry of the word. The bishop told her to wait until he came to her parish for Confirmation. She left him, muttering some incoherencies. Shortly afterwards, she was arrested for speaking on one of the public thoroughfares without a permit. Only two months ago, the bishop refused to confirm her when Confirmation was administered in her parish.

I desire to know whether I should present her for Confirmation. The fact that she is eccentric does not make her incapable of being confirmed. On the other hand, the decision of another Ordinary is involved.

PACIFICUS

⁴ Canon 217, § 1. *Episcopus territorium suum in regiones seu districtus, pluribus paroeiis constantes, distribuatur, qui veniunt nomine vicariatus foranei, decanatus, archipresbyteratus, etc.*

§ 2. *Si haec distributio, ratione circumstantiarum, videatur impossibilis aut inopportuna, Episcopus consulat Sanctam Sedem, nisi ab eadem iam fuerit provisum.*

⁵ Canon 446, § 2. *Vicarius foraneus ad nutum Episcopi amoveri potest.*

It is true that the laity have the right to receive from the clergy in accordance with the norms of law all the aids necessary for the salvation of their soul.¹ In regard to Confirmation in particular, though the reception of it is required for salvation only because of divine precept, nevertheless no one may put off its reception, and pastors are obliged to see to it that the faithful present themselves for Confirmation when a reasonable opportunity offers.² Moreover, the possession of a diocesan domicile or quasi-domicile is not necessary in order that a bishop may have the right of conferring this sacrament, though he may not exercise it in opposition to the prohibition of the Ordinary of the person to be confirmed.³ While it is required that this prohibition shall be express, it may nevertheless be implied from the acts of the Ordinary, for an implicit prohibition is also express.

The acts of the Ordinary of this petitioner seem to leave little doubt that they are prohibitive. His actual refusal to confirm her when he was administering Confirmation in the parish to which she belongs can hardly be interpreted in any other light. It seems so clear that it would be almost an affront to ask his permission to confirm the petitioner. Certainly also it would be in the height of bad taste, to say the least, to tell the petitioner that she may be confirmed if she obtains the permission of her Ordinary. This reply would be grist for the mill of one such as the account of the case describes her to be. She would flaunt in every avenue of the diocese of her own Ordinary the willingness of the neighboring Ordinary to confirm her and would allege this as proof of the injustice of which she alleges herself to be the victim at the hands of her own Ordinary.

It is not the province of an academic solution to criticize the decision of her own Ordinary. It is true though, that some Ordinaries might be less severe than he in their attitude to such paranoiac types.

¹ Canon 682. *Laici ius habent recipiendi a clero, ad normam ecclesiasticae disciplinae, spiritualia bona et potissimum adiumenta ad salutem necessaria.*

² Canon 787. *Quanquam hoc sacramentum non est de necessitate medii ad salutem, nemini tamen licet, oblata occasione, illud negligere; imo parochi curent ut fideles ad illud opportuno tempore accedant.*

³ Canon 783, § 1. *Episcopus in sua dioecesi hoc sacramentum [Confirmationem] etiam extraneis legitime ministrat, nisi obstet expressa proprii eorum Ordinarii prohibitio.*

FIRE INSURANCE CLAIM

A small fire in the basement of the rectory filled the house with smoke and discolored the plaster on the walls. The paint on the window frames outside the building was also discolored. I liked the effect on the inside walls. As to the frames outside, I had the janitor wash them. When the adjuster came, I put in no claim for either of these items. A priest friend of mine states that I am obliged to pay the parish the amount I could have recovered for painting the walls and the frames, especially since the painting will be necessary earlier by three years or so because of my failure to have the painting done now at the expense of the insurance company.

FERVENS

A pastor is the administrator of his parish.¹ All administrators of ecclesiastical property are bound to be assiduous in protecting it and asserting its rights.² Failure to fulfill the obligations of his office would make him responsible for the damage caused the parish as a consequence of his negligence. On the moral side, his obligation of restitution would depend, prior to the judgment of a duly qualified court, on whether his negligence amounted to a formally imputable sin and whether it was the precise efficacious cause of the damage.³ On the juridical side, the case may be decided independently of his antecedent formal guilt. The decision, in the present case, depends on whether the pastor was obliged as a responsibility of his office to seek from the insurance company funds that would relieve him of the expense of painting his walls, an expense which he would have been obliged to incur if there had been no fire.

This question is different from the one in which the painting would be required as a result of the fire. In that case there could

¹ Canon 1182, § 1. *Firmo praescripto can. 1519-1528, administratio bonorum quae destinata sunt reparandae decorandaeque ecclesiae divinoque in eadem cultui exercendo, pertinet, nisi aliud ex speciali titulo vel legitima consuetudine constet, ad Episcopum cum Capitulo, si de ecclesia cathedrali agatur; ad Capitulum ecclesiae collegiatae, si de collegiata; ad rectorem, si de alia ecclesia.*

§ 2. *Etiam oblationes factas in commodum paroeciae aut missionis, aut ecclesiae sitae intra paroeciae vel missionis fines, administrat parochus vel missionarius, nisi agatur de ecclesia propriam administrationem habente, distinctam ab administratione paroeciae vel missionis, aut nisi aliud ferat ius peculiare aut legitima consuetudo.*

² Canon 1523. *Administratores bonorum ecclesiasticorum diligentia boni patrisfamilias suum munus implere tenentur; ac proinde debent: 1° Vigilare ne bona ecclesiastica suae curae concredita quoquo modo pereant aut detrimentum capiant; . . .*

³ Cf. Jone, *Moral Theology*, (Westminster, Md.: The Newman Bookshop, 1945), nn. 333, 334, 345-347.

be little doubt of the pastor's negligence if he failed to obtain from the insurance company the funds necessary for the painting. That is exactly what the fire insurance company agrees to do: to indemnify the insured for any expenses arising out of a fire. In this case, there apparently were no expenses arising out of the fire, except the wages of the janitor for the time spent by him in washing the window frames. While it might be conceivable that another pastor would not have liked the smoke effect on the walls and would have proceeded to paint them at once, this pastor did not react in this manner. The former would have been obliged to obtain funds for the painting from the insurance company; the latter did no painting for which funds were to be obtained. The fact that it was necessary to paint the walls at the usual time, a schedule that would have been kept even if there had been no fire, and that this painting could have been postponed for three years if the walls had been painted at the time of the fire, seems really to indicate that, if asked to defray the cost of this painting, the insurance company would have been requested to assume a usual burden of the parish rather than to indemnify the parish for loss caused by fire.

It seems, therefore, that even on the juridical side the pastor should not be required to make restitution of the sum involved in the painting done long after the occurrence of the fire.

REASON FOR MIXED MARRIAGE DISPENSATION

A baptized Catholic of my parish desires to marry the daughter of a non-Catholic minister, whose church is about half a block away from my church. The woman is a baptized Presbyterian.

They propose to set up housekeeping in a distant city and the young woman will be removed from the influence of her father, who, I may say, does not seem to be bigoted.

The woman has taken the necessary instructions and has been very courteous in all her visits to the rectory. She has signed the *cautiones*. The Catholic party has likewise done so.

I can see no reason except the danger of an invalid attempt. Does this suffice?

INDEFESSUS

The Church most earnestly discountenances mixed marriages.¹ In

¹ Canon 1060. Severissime Ecclesia ubique prohibet ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit catholica, altera vero sectae haereticæ seu schismaticæ adscripta; quod si adsit perversionis periculum coniugis catholici et prolis, coniugium ipsa etiam lege divina vetatur.

the presence of the danger of perversion for the Catholic party or the children, these marriages are forbidden by the divine law itself.

The dispensation permitting such marriages, then, is not to be taken as a matter of course. Stereotyped reasons are not to be taken down and dusted off for presentation to the dispensing superior merely to gratify the whim of persons unaware of the severity of the Church's prohibition. For such a dispensation just and serious reasons are required by canon 1061.² These reasons must be *canonical* reasons, *i.e.* such as are usually accepted by the Roman Curia. Reasons which are not *canonical* do not suffice singly to justify a dispensation from any impediment, though if several coalesce they may be sufficient to produce an adequate reason. According to Benedict XIV, the reason justifying a dispensation for a mixed marriage must generally affect the public welfare.³

The importance of a justifying reason in the case of a major impediment to marriage cannot be overstressed, because in its absence the dispensation issued by anyone subordinate to the Holy See is invalid, though a doubt as to the sufficiency of the reason would make neither unlawful nor invalid the granting of the dispensation.⁴

The quinquennial faculties granted local Ordinaries by the Holy Office in regard to dispensations from the impediment of mixed religion repeat the necessity of the presence of just and serious reasons.

However, the danger of an attempt at a civil marriage is regarded by the authors as a canonical cause affecting the public welfare and as sufficient to justify a dispensation from the impediment of mixed religion. The scandal, and the danger of apostasy for the Catholic

² Canon 1061. § 1. *Ecclesia super impedimento mixtae religionis non dispensat, nisi: 1° Urgeant iustae ac graves causae;*

2° *Cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque coniux de universa prole catholice tantum baptizanda et educanda;*

3° *Moralis habeatur certitudo de cautionum implemento.*

§ 2. *Cautiones regulariter in scriptis exigantur.*

³ *De Synodo Dioecessana*, lib. IX, c. iii, n. 5.

⁴ Canon 84. § 1. *A lege ecclesiastica ne dispensetur sine iusta et rationabili causa, habita ratione gravitatis legis a qua dispensatur; alias dispensatio ab inferiore data illicita et invalida est.*

§ 2. *Dispensatio in dubio de sufficientia causae licite petitur et potest licite et valide concedi.*

party, both conspire to make this cause adequate. However, the presence of this danger is not perfunctorily assumed as existing in every case. On the other hand, it is not required that the parties shall actually have threatened such an attempt. It suffices that on due consideration of all the factors involved there exists moral certainty of the danger. Indeed, the threat would not necessarily import such moral certainty unless the latter were obtainable from an analysis of the factors that would make likely the carrying out of the threat.

The addition of other reasons is recommended, if they exist: such as the hope of the conversion of the non-Catholic party or the legitimation of offspring.

CHAPTER RIGHTS OF MILITARY CHAPLAINS

We are preparing for a chapter and many of our members are chaplains. The constitutions of our institute provide that those who are exclaustated by an Apostolic rescript are deprived of an active and passive vote. Are the priests of our institute who are chaplains allowed to vote for delegates to the chapter?

PROVISOR

It is true that military chaplains have been authorized by the Holy See to live outside the cloister.¹ However, it seems safe to say that the constitutions were not drafted in contemplation of this case. Here one is inclined to say that the military chaplains are granted a *venia*, or a leave of absence, within the terms of canon 606, § 2, rather than an indult of exclaustation. The constitutions contemplated the latter, *i.e.* a specific indult for religious who want to go about their own business rather than that of the institute.

SUSPICION OF HERESY

I would like to know whether I need apply for special faculties in regard to one who is suspect of heresy by reason of an agreement that all the boys born in the family should be brought up Episcopalians.

CONCILIATOR

One who enters marriage under such an agreement is subject to an excommunication incurred *ipso facto*, reserved to the local

¹ Cf. Circular letter No. 45 of the Military Ordinariate of November 15, 1945.

Ordinary, and is suspect of heresy.¹ One who is suspect of heresy is not thereby guilty of a specific and distinct delict. If, on being warned, he removes the cause of the suspicion, he purges himself of the suspicion itself. This is true, also, if he can establish to the satisfaction of the competent superior that he is unable to remove the cause of the suspicion. It is obvious, then, that the warning is essential to the existence of a specific, distinct delict. This warning is of no effect in this regard unless it is made in canonical form.² After the lapse of six months following the canonical warning, the penalties of heretics would be automatically incurred. It would thus be necessary to obtain faculties to absolve him from the censure of excommunication which is reserved *speciali modo* to the Holy See, unless the delict has been brought into the external forum of the local Ordinary, in which case the latter may absolve, even by a delegate, after due abjuration on the part of the delinquent.³

In the absence of a canonical warning, however, there is no specific delict and no specific faculties in regard to the suspicion of heresy are required.

RE-APPOINTMENT OF OUTGOING CONSULTORS

At the expiration of the last term of office of our diocesan consultors there was no confirmation of them for the ensuing term of three years. Would they be authorized to elect an administrator in the case of a vacancy of the see?

TURBATUS

Canon 159 requires that all appointments to ecclesiastical offices should be made in writing, but this requirement is not imposed under penalty of the invalidity of the appointment. Therefore, the confirmation of the consultors at the expiration of their triennial term, while it should be made in writing, is not invalid if it is made orally. However, confirmation of some sort is obviously necessary under canon 426, § 2.¹ If the consultors receive a summons to attend one

¹ Canon 2319, § 1. Subsunt excommunicationi latae sententiae Ordinario reservatae catholici: . . . 2° Qui matrimonio uniuntur cum pacto explicito vel implicito ut omnis vel aliqua proles educetur extra catholicam Ecclesiam. . . .

§ 2. Ii de quibus in § 1, nn. 2-4, sunt praeterea suspecti de haeresi.

² Cf. canon 2309.

³ Cf. canon 2314, § 2.

¹ Canon 426, § 2. Exacto triennio, Episcopus vel alios in eorum [consultorum] locum substituat, vel eosdem ad aliud triennium confirmet, quod idem servetur singulis trienniis.

of the regular meetings, and if this summons is signed by the bishop, that would seem sufficient confirmation, although it is merely implicit. If the consultors have regular meeting days on which they assemble without summons, it would seem that an implicit confirmation would be entailed in the act of the bishop in seeking their opinion. Their mere presence would seem not sufficient in the absence of some positive act of juridical recognition on the part of the bishop.

Suppose that the see should become vacant between the date of the expiration of their term and the date of their first meeting thereafter. If at least three of them have not reached the end of their term of office, they certainly may proceed to the election of the administrator. If less than three still hold office, the matter is doubtful, though on general juridical principles a sole survivor of the members of a moral person is the moral person. But if none of them is in office, it is clear that they cannot elect the administrator. Is this case contemplated in canon 432, § 2, according to which the right of the appointment of the administrator devolves upon the Metropolitan when the board of diocesan consultors has failed to act within eight days? In this case there is no board of diocesan consultors. Consequently, it cannot be said that a board of diocesan consultors has failed to act.

In 1919 the Pontifical Commission for the Interpretation of the Canons of the Code expressly replied that the provisions of the Councils of Baltimore for the administration of a vacant see were abrogated by the Code.² In the same document, however, the Sacred Consistorial Congregation gave permission for three years (till 1922) that in dioceses of the United States in which there are not at least five or six diocesan consultors, the archbishop might proceed to name an administrator to be confirmed by the Apostolic Delegate.³ Clearly, appointment of the administrator by the Metropolitan is not favored.

In practice, in the dilemma indicated, the matter should be referred to the Metropolitan. He, in turn, may feel obliged to consult the Apostolic Delegate or the Sacred Consistorial Congregation.

² II Plen. Conc. Balt., *Acta*, nn. 96-99; III Plen. Conc. Balt., *Acta*, n. 22.

³ AAS, XI (1919), 75; Bouscaren, *The Canon Law Digest*, I, 242.

INCOMPATIBLE OFFICES

I was previously a diocesan consultor and have lately been made vicar general. I am also a pastor of a large city parish with three assistants. I am wondering whether I may have tacitly resigned my parish by the acceptance of the appointment as vicar general.

ONERATUS

The petitioner is obviously disturbed by canon 188, 3° which provides that tacit resignation of an office supervenes when a cleric accepts another ecclesiastical office that is incompatible with the one possessed.¹ Canon 156 forbids the conferring of two incompatible offices on one and the same person and indicates that those offices are to be regarded as incompatible which cannot be fulfilled by one person at the same time. Canon 460 refers to canon 156 in requiring that a pastor shall be appointed to only one parish, except in the case of two parishes which, enjoying their distinct individuality, have been united (*aeque principaliter unitae*). Canon 367, § 3, however, in providing that a pastor, or any other priest charged with the care of souls, should not be made a vicar general, makes an exception for a case of necessity. From this exception it follows that there is no juridical incompatibility between the office of pastor and that of vicar general. On the other hand, the Code itself provides that only in case of necessity shall a pastor be appointed vicar general. What is to be said of the case in which, as in the present one, the pastor is not able to discharge even the obligations of his parish but needs three assistants to help him! However, he need not fear that he has tacitly resigned his parish.

Nor has he lost his position as diocesan consultor by reason of his promotion to the position of vicar general. The Sacred Consistorial Congregation issued a declaration in 1914,² in which it stated that there is only one case in which it should not occur that a vicar general should be a consultor: *viz.*, when the consultors, either according to usage or for any other reason, are very few in number. In that case, the Sacred Congregation said, a priest who is not of the number of consultors should be chosen vicar general or the number of consultors should be increased.

¹ Canon 188. Ob tacitam renunciationem ab ipso iure admissam quaelibet officia vacant ipso facto et sine ulla declaratione, si clericus: . . . 3° Aliud officium ecclesiasticum cum priore incompatibile acceptaverit et eiusdem pacificam possessionem obtinuerit.

² AAS, VI (1914), 111.

Some local Ordinaries would conceivably be of the opinion that greater efficiency in the offices enjoyed by this correspondent would result upon a division of labor.

DISPENSATION FROM PRIVATE VOW

Sylvia, a baptized Catholic, aged forty-two, made a private vow of perpetual chastity at the age of twenty, with full deliberation and with the consent of her confessor. She has met a widower, a Catholic, with two children by a former marriage who has proposed marriage to her.

Life has not been kind to her. At times she has been unemployed and dependent on cousins for board and lodging. She now sees an opportunity for security and therefore begs to be dispensed from the obligation of the vow.

REFUGIUM

The vows that impede marriage are those of simple virginity, of not marrying, of receiving sacred orders, of entering a religious institute of simple vows, of entering a religious institute of solemn vows, and of perpetual and perfect chastity.¹ Dispensation from all but the last two of these impeding impediments may be granted by the local Ordinary or his delegate in virtue of canon 1313, 1°.² The local Ordinary or his delegate can also dispense from the vow of entering a religious institute of solemn vows if it was taken conditionally or prior to the age of eighteen on the part of the votary, and, under the same circumstances, from the private vow of perpetual and perfect chastity. Moreover, in regard to public vows of perpetual and perfect chastity, the local Ordinary, in virtue of canon 638, can grant an indult of secularization to a member of a religious institute of diocesan approval, which indirectly carries with it, in virtue of canon 640, § 1, 2°, a dispensation from the vows.³

¹ Cf. canon 1058, § 1.

² Canon 1313. *Vota non reservata possunt iusta de causa dispensare, dummodo dispensatio ne laedat ius aliis quaesitum:*

1° *Loci Ordinarius quod attinet ad omnes suos subditos atque etiam peregrinos;*

2° *Superior religionis clericalis exemptae quod attinet ad personas quae can. 514, § 1, enumerantur;*

3° *Ii quibus ab Apostolica Sede delegata fuerit dispensandi potestas.*

³ The bishop cannot except the vow of chastity from his indult of secularization—cf. Creusen-Garesche-Ellis, *Religious Men and Women in the Code* (Milwaukee: Bruce, 1940), p. 259.

The private vows which have just been indicated as reserved are thus controlled by canon 1309. However, the quinquennial faculties of local Ordinaries contain the authority to dispense from the impeding impediments of canon 1058, for a just and reasonable cause, for the purpose of enabling the votary to marry. As to marriage already contracted by one bound by the vow of perfect and perpetual chastity made unconditionally by one who had passed the age of eighteen, the Sacred Penitentiary includes in the quinquennial faculties the authority to grant a dispensation which will permit the votary who has violated his vow to ask for the conjugal rights. In this case, the person dispensed is to be warned that he remains bound by the vow outside the lawful use of marriage and in the event that his partner should die.

Is the cause alleged sufficient for the granting of the dispensation? The poverty of a widow is a canonical cause, but not the need of the widower or the poverty of a virgin. However, the woman involved is beyond the usual marriageable age. This is regarded as a canonical reason, though it seems somewhat of a contradiction to say that the difficulty of a woman in finding a man to marry her is a reason why she should be relieved of her determined resolve not to marry. The difficulty seems to harmonize with her expressed intention when she made the vow. In spite of that, however, the reality is that now she does wish to marry and the vow no longer expresses her will but rather an obstacle to it. In granting the faculties to permit this dispensation, the Sacred Congregation of the Sacraments was surely aware that matrimonial impediments should all march with the previous mind of the votary inasmuch as they all interfere with marriage, the very purpose she had in mind in making the vow. The Sacred Congregation recognized that a change of mind is possible in many instances, and when that change of mind occurs the petitioner is psychologically in the same position, with regard to impediments and dispensations from them, as any person who did not make a vow. The fact that the impediment depended on her own voluntary act should not make it necessary that she be deprived of the usual canonical reasons justifying a dispensation. Psychologically she wants marriage; juridically she is prevented from marrying. But she has on her side the canonical reason of advanced years. This seems adequate, especially in the light of the persuasive (non-canonical) reasons involved in her own poverty and the need of the widower for aid in rearing his children.

RESERVED SEATS

There has been a custom in this parish of selling reserved seats for all important ceremonies in the church even when these coincide with a Sunday Mass. I have consulted the church committeemen with a view to eliminating the abuse, but they make the point that it does not differ from pew rent, except that the rental is for one occasion and must be renewed each time.

I know that there will be a revolt among the parishioners who are able to pay for choice seats on these occasions if I attempt to make a change, and I desire to be very sure that I will have support in any move I make in that direction.

TESSERA

To permit the reservation of seats in a church the express consent of the local Ordinary is required and he is not permitted to give this consent unless there is adequate provision for the comfort of all who wish to attend.¹ Moreover any admission charge for church functions is expressly condemned.² This condemnation of the abuse in canon 1181 is found also in decree n. 397 of the II Plenary Council of Baltimore, enacted as a consequence of a letter of Cardinal Barnabò to the Archbishop of Cincinnati in 1862, in which the following statement was made: [*praxim pecuniam exigendi ad fores ecclesiarum, ut fideles ingredi possint, et divinis mysteriis adesse*], "*Sibi minime placere declaravit Summus Pontifex, Pius Papa Nonus, et eliminandam prorsus voluit*".

It would seem unwise to attempt to abolish the custom mentioned in this case, provided that the local Ordinary's consent has been given to it. It should be made clear to all, both purchasers of these reserved seats and all others, that the price charged is not a price of admission to the church but rather a fee for the privilege of sitting in a certain place in the church.

DEANERY CONFERENCES

In addition to the Spring and Autumn clerical conference which is held in the episcopal city of our diocese and which all diocesan priests from all over the diocese attend, my dean schedules two other conferences for the priests of his deanery. He is the only dean in our diocese who does so. I have refused to attend for the past two years and in turn he refuses to assist at festive functions in my parish church. Am I obliged to attend these additional conferences?

NON GRATIS

¹Canon 1263, § 2. *Sine expreso Ordinarii loci consensu nemo fidelis locum habeat in ecclesia sibi suisque reservatum; Ordinarius autem consensum ne praebeat, nisi ceterorum fidelium commoditati sit sufficienter consultum.*

²Canon 1181. *Ingressus in ecclesiam ad sacros ritus sit omnino gratuitus, reprobata qualibet contraria consuetudine.*

If the petitioner desires his dean to show him favor it would seem that he should attend these conferences at least out of courtesy in recognition of the dean's invitation.

In the absence of a schedule set up by the bishop, the meetings thus called by the dean cannot be called theological conferences in the juridical sense, for canon 448, § 1, obviously conditions the exercise of the rural dean's authority in regard to the latter upon the designation of dates by the bishop.¹

In regard to what the law requires of the local Ordinary, observe that canon 131 is not satisfied by the holding of conferences in the episcopal city, since it requires that they be held also in the respective deaneries. Canon 131 also requires that they be held several times a year (*saepius in anno*), thus abrogating the provision of the II and III Plenary Councils of Baltimore permitting that they be held only twice a year in rural districts.² Indeed, even the II and III Plenary Councils of Baltimore require that they be held four times a year in cities.³

The second paragraph of canon 131 seems to relax the severity of the first paragraph by providing that if it is difficult to hold these conferences, the solution of the cases shall be sent in according to the norms provided by the local Ordinary. It is probable that the local Ordinary in the diocese involved in this case has decided that it is difficult to hold these conferences several times a year in the rural deaneries and has substituted two conferences a year in the episcopal city. It seems clear, however, that he should provide for the handing in of a set of cases at least once a year in addition to the two conferences.⁴

¹ Canon 448, § 1. Vicarius foraneus debet, diebus ab Episcopo designatis, convocare presbyteros proprii districtus ad conventus seu collationes de quibus in can. 131 eisdemque praeesse; ubi vero plures habeantur huiusmodi coetus in variis districtus locis, invigilare ut rite celebrentur.

² II Plen. Conc. Balt., *Acta*, n. 68; III Plen. Conc. Balt., *Acta*, n. 192.

³ *Loc. cit.*

⁴ Canon 131, § 1. In civitate episcopali et in singulis vicariatibus foraneis saepius in anno, diebus arbitrio Ordinarii loci praestituendis, conventus habeantur, quos *collationes* seu *conferentias* vocant, de re morali et liturgica; quibus addi possunt aliae exercitationes, quas Ordinarius opportunas iudicaverit ad scientiam et pietatem clericorum promovendam.

§ 2. Si conventus haberi difficile sit, resolutae quaestiones scriptae mittantur, secundum normas ab Ordinario statuendas.

WRITTEN CONFERENCE SOLUTIONS

Although I have celebrated my silver jubilee I have received a letter from the chancery asking why I did not submit a written solution of the cases discussed at the last theological conference. In our diocese it has been customary to exempt those who have celebrated their silver jubilee from the obligation of handing in written solutions of the cases. Can this custom be overthrown?

IUBILATUS

Canon 131 requires the handing in of the written solutions of the cases only when the prescribed conferences cannot be held. The III Plenary Council, however, requires that all who attend the conferences shall hand in a written solution of the cases.¹ Two priests are required by the latter's decree to read their solutions after choice of them by lot. These provisions of the III Plenary Council seem not to conflict with the norms of canon 131, and to retain their force. They make no provision for exemption of any who are obliged to attend in regard to the handing in of written solutions. Of course, in virtue of canon 291, § 2, the local Ordinary can dispense in particular cases and for a just reason from this obligation. It is also conceivable that the custom, affecting only the particular law of the III Plenary Council and not the law of the Code, is sufficiently ancient to justify the exemption of silver jubilarians. On the other hand, nothing except his discretion would prevent the local Ordinary from abrogating that custom and reinstating the law of the III Plenary Council of Baltimore through a diocesan statute.

INSTRUCTING PRIEST AND BAPTISM OF HIS CONVERT

I have been instructing one of the young boys in our preparatory school. As the young man is prepared to be baptized and desires that I baptize him, I applied to the pastor of the parish where the school is located for permission to baptize the young man in the parish church. He replies that he does not wish to get in trouble with the pastor of the church where the boy's parents reside and refuses to give me permission.

My view is that the boy does not pertain to the pastor of his parents' domicile, since they are not even baptized. I seek permission to obtain baptismal water from the Cathedral font and to baptize the boy in our students' chapel, with all the solemnities.

DOCTOR

¹ *Acta*, n. 192.

The young boy in question is regarded as an adult in reference to the reception of baptism.¹ Therefore the right of baptizing him belongs to the local Ordinary.² The local Ordinary may indicate that he does not wish to avail himself of this right. In that event it returns to the pastor. The mere fact that a priest has instructed the convert does not confer on him the right of baptizing the latter.³ The pastor who would have this right is the pastor of the domicile of him to whose authority the minor is subject, unless the latter has acquired a quasi-domicile in the parish in which the school is located, in which case the pastor of the latter parish would also have the right to baptize him.⁴

On the other hand, the local Ordinary might authorize the priest who gave the instructions to confer baptism, and this either by a diocesan statute or by special delegation.⁵ The local Ordinary may even delegate to a priest the faculty to confer baptism anywhere in the diocese.⁶

No matter who is delegated to baptize, he must confer this sacrament in a church or public oratory, that is, at the baptistery, to which only a church or public oratory is entitled.⁷ The solemn conferring of baptism in a church or public oratory lacking a baptistery may be permitted only in cases in which distance or other circumstances would involve serious inconvenience, if the baptism were

¹ Canon 745, § 2. Cum agitur de baptismo: . . . 2° Adulti . . . censentur, qui rationis usu fruuntur; idque satis est ut suo quisque animi motu baptismum petat et ad illum admittatur.

² Canon 744. Adultorum baptismus, ubi commode fieri possit, ad loci Ordinarium deferatur, ut, si voluerit, ab eo vel ab eius delegato sollemnius conferatur.

³ Cf. Waldron, *The Minister of Baptism*, The Catholic University of America Canon Law Studies, n. 170 (Washington, D. C.: The Catholic University of America Press, 1942), p. 80. Cf. also canon 738.

⁴ Cf. canons 93, §§ 1, 2; 94, § 1.

⁵ Cf. canon 744; Waldron, *op. cit.*, pp. 80, 81.

⁶ Cf. Schaaf, "Right to Baptize Converts"—*American Ecclesiastical Review*, XCIV (1936), 531, 532.

⁷ Canon 773. Proprius baptismi sollemnis administrandi locus est baptisterium in ecclesia vel oratorio publico.

Canon 774, § 2. Loci Ordinarius potest pro fidelium commoditate permittere vel iubere ut fons baptismalis ponatur etiam in alia ecclesia vel publico oratorio intra parociae fines.

to be conferred in the church or public oratory possessing the baptistery.⁸ But baptism is not to be conferred solemnly outside a church or public oratory except in an extraordinary case and with the permission of the local Ordinary.⁹

Moreover, custom may authorize the priest who gave the instructions to confer solemn baptism. Such a custom is said to exist in the United States. In virtue of it, a pastor could baptize converts whom he instructed even though they had no domicile or quasi-domicile in his parish. The same may be said of his assistants. Other priests who baptize solemnly those whom they instruct need the permission of the pastor in whose parish they solemnly confer the baptism.¹⁰

The permission to use the baptistery should in any event be obtained from the pastor of the parish in which the adult is solemnly baptized, even when delegation to baptize is given by the local Ordinary, unless he gives express permission for the use of a particular baptistery.

The case does not seem to offer the extraordinary circumstances which would justify solemn baptism outside a baptistery, though, if the pastor of the parish of the young man's parents' domicile refuse to permit the use of the baptistery of his parish church, and the pastor of the parish in which the school is located should do the same, the situation might justify this solution. Perhaps it would be the thought of the local Ordinary that the Cathedral baptistery might be used.

The fact that the parents of the youth are unbaptized is irrelevant in determining his domicile. He himself is unbaptized at the moment, yet the case seems to argue, and rightly, that his quasi-domicile at least can be the basis on which might be determined the pastor whom the law authorizes to baptize him solemnly.

⁸ Cf. can. 775.

⁹ Canon 776, § 1. *In domibus autem privatis baptismus sollemnis administrari non debet, nisi hisce in adiunctis: . . .*

2° *Si loci Ordinarius, pro suo prudenti arbitrio et conscientia, iusta ac rationabili de causa, in casu aliquo extraordinario id concedendum censuerit.*

¹⁰ Canon 739. *In alieno territorio nemini licet, sine debita licentia, baptismum sollemnem conferre ne sui quidem loci incolis.*

ATHEIST CHILD IN CATHOLIC SCHOOL

The Sisters at Academy X insist on retaining among the student body a child who is a complete atheist. The child's parents are both exemplary Catholics, and it is for their sake that the Sisters are acting so. However, they insist that the child is a Catholic.

Though the child has made her first confession and has received her first Communion, she is incorrigible in the matter of Faith. I have heard her on at least a half dozen occasions speaking contemptuously of the doctrines of the Faith in the presence of the other children. May this child remain in school?

VIGILANS

The admission of a non-Catholic student does not seem to make a Catholic school a *mixed* school; nor the retention of a student born of Catholic parents who seems to be an atheist. The III Plenary Council of Baltimore indicated that the presence of non-Catholic students in Catholic schools made the latter more or less mixed, but did not absolutely forbid the acceptance of non-Catholic students. On the other hand, it strongly urged the superiors of schools in which non-Catholic students were present to prevent both impairment or loss of Faith on the part of the Catholic students as a result of their association with the non-Catholic students, as well as scandal that might possibly be given the latter by the conduct of Catholic students.¹ This obligation rests ultimately on the shoulders of the local Ordinary, especially in virtue of canons 1381 and 1382.²

It pertains to the local Ordinary, then, to judge whether or not the school authorities in this case are acting according to their responsibilities in retaining the child who might be a threat to the

¹ *Acta*, n. 213. A pre-Code reply of the Holy Office in a particular case required the permission of the local Ordinary for the admission of non-Catholics.—S. C. S. Off., 6 dec. 1899—*Collectanea S. C. P. F.* (2 vols., Rome, 1907), n. 2070.

² Canon 1381, § 2. Ordinariis locorum ius et officium est vigilandi ne in quibusvis scholis sui territorii quidquam contra fidem vel bonos mores tradatur aut fiat. § 3. Eisdem similiter ius est approbandi religionis magistros et libros; itemque, religionis morumque causa, exigendi ut tum magistri tum libri removeantur.

Canon 1382. Ordinarii locorum sive ipsi per se sive per alios possunt quoque scholas quaslibet, oratoria, recreatoria, patronatus, etc., in iis quae religiosam et moralem institutionem spectant, visitare; a qua visitatione quorumlibet religiosorum scholae exemptae non sunt, nisi agatur de scholis internis pro professis religionis exemptae.

Faith of the other children. If the latter effect could be counteracted in some way, it would seem that it would not be necessary to dismiss her. Great evils may follow such a course. Her parents may be alienated from the Faith. She herself will be embittered and what may now be mere exhibitionism may be consolidated into a fixed antagonism toward religion. Surely when a non-Catholic child is admitted to a Catholic school, it is hardly to be expected that he will not repeat to Catholic children the conversation that he hears at home. The case of this child, then, is not much different from that of any non-Catholic child admitted to a Catholic school.

PRECOCITY OR OBSESSION?

The daughter of my housekeeper is constantly shocking her mother with blasphemous witticisms and even arguments attacking Holy Scripture and the forgiveness of sins. The child attends our parochial school and is now in the seventh grade. She spends a good deal of time in our branch library. I have advised the mother not to let her go to the library unless the mother goes with her. I am wondering whether an exorcism is in order, for it seems unlikely that this child should be so vicious in her attitude towards the Faith, unless she were obsessed.

OFFICIOSUS

Private exorcism may be performed by any of the faithful without any permission. Public exorcism, namely that performed in the name and by the authority of the Church through ministers assigned to that function using a form determined by her, cannot be performed without authorization. Local Ordinaries can depute habitual faculties to priests to use the simple form authorized by Pope Leo XIII.¹ The use of the solemn form requires special and express permission of the local Ordinary.²

One should not conclude too quickly to the existence of obsession. A precocious child can quickly learn to mouth the arguments of her

¹ *Rituale Romanum*, tit. XI, c. 3.

² Canon 1151, § 1. *Nemo, potestate exorcizandi praeditus, exorcismos in obsessos proferre legitime potest, nisi ab Ordinario peculiarem et expressam licentiam obtinuerit.*

§ 2. *Haec licentia ab Ordinario concedatur tantummodo sacerdoti pietate, prudentia ac vitae integritate praedito; qui ad exorcismos ne procedat, nisi postquam diligenti prudentique investigatione compererit exorcizandum esse revera a daemone obsessum.*

Prümmer (*Manuale Iuris Canonici*, [Friburgi Brisgoviae, 1922], q. 352) restricts the necessity of this special and express permission to solemn, public exorcism.

elders, not her parents in this case, but others with whom she may associate because of an advanced mental age or an unusual curiosity in matters of religion. Prayer and vigilance would seem rather to be recommended. Even in the use of private exorcism and of the simple form of public exorcism, one should proceed with extreme caution. The less pointed the exorcism in the circumstances surrounding it the less difficulty should be found in permitting its use. Witness the exorcisms that occur in the course of the administration of the sacrament of baptism and in the ceremonies of consecrations and blessings, for which, as canon 1153 states, no further faculty is needed than that one be a minister of the sacrament, of the consecration, or of the blessing.

Obviously, in the absence of obsession, the child's leisure is in need of supervision. She does not pick these verbal sallies out of thin air.

COLLECTION PERMISSION

I am a missionary priest, diocesan, collecting in this country for the mission to which I am attached in China. It happens that my Vicar Apostolic renews my permission from year to year. But he died two weeks ago and my renewal which should have come a month ago has not arrived. I fear that his illness may have prevented him from sending it.

Meanwhile, with the local Ordinary's permission, I have obtained the privilege of collecting in several parishes from the respective pastors. My Superior's permission expires in six days. May I take up these collections as arranged?

QUAESTOR

Under canon 1503 private individuals are forbidden to take up collections of this kind without the permission of both Ordinaries, their own and the Ordinary of the place in which the collection occurs.¹ A private person, in the sense of this canon, is one who does not enjoy the authority of an ecclesiastical office in taking up the collection.²

In the present case it is apparent that the missionary has obtained the permission of the local Ordinary of the place where the collection is to be taken up, presumably in writing, as canon 1503 re-

¹ Canon 1503. . . . *vetantur privati tam clerici quam laici sine Sedis Apostolicae aut proprii Ordinarii et Ordinarii loci licentia, in scriptis data, stipem cogere pro quolibet pio aut ecclesiastico instituto vel fine.*

² Cf. canon 145, § 1.

quires, though this would not be required for the validity of the permission in any event. The permission of the missionary's own Ordinary remains valid, in virtue of canon 61, till its expiration.³ The missionary's present Ordinary is the pro-vicar instituted in accordance with canon 309, as is apparent from the provision of canon 198, § 1, which recognizes as an Ordinary him who succeeds a Vicar Apostolic in the government of the Vicariate.

The missionary should cable the pro-vicar at once and should not arrange for any further collections until he obtains permission from the latter. As to those collections already scheduled, it would seem that this case lies outside those contemplated by the legislator in enacting canon 1503, and, as a consequence, the collections may be taken up as scheduled.

JEROME D. HANNAN

THE CATHOLIC UNIVERSITY OF AMERICA

³ Canon 61. Per Apostolicæ Sedis aut diœcesis vacationem nullum eiusdem Sedis Apostolicæ aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat, aut rescriptum contineat potestatem alicui factam concedendi gratiam peculiaribus personis in eodem expressis, et res adhuc integra sit.

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The Midwest Regional Conference of The Canon Law Society of America was held in Columbus November 6, 7. Papers were read on the occasion by Very Rev. Louis H. Motry, J.C.D., Dean of the School of Canon Law of The Catholic University of America, and by Rev. Jerome D. Hannan, J.C.D., Associate Professor of Canon Law, The Catholic University of America, dealing respectively with the judicial and the administrative phases of the work of the episcopal curia.

Decrees and Decisions

CANONICAL

SACRA PAENITENTIARIA APOSTOLICA

(Officium de Indulgentiis)

I

DECRETUM

INDULGENTIA DITATUR PRAEFECTORUM APOSTOLICORUM ANULI OSCULUM

Ss̃mus D.N. Pius div. Prov. Pp. XII, in Audientia infra scripto Cardinali Paenitentiario Maiori die 8 Novembris 1945 concessa, ut magis effulgeat Christi gregis Pastorum dignitas ac insimul per Ecclesiae thesaurum fidelium bono spirituali uberius consulatur, quorundam Praefectorum Apostolicorum preces libenter excipiens, benigne elargiri dignatus est *partialem quinquaginta dierum Indulgentiam*, a christifidelibus lucranda quoties eorundem Praelatorum anulum devote deosculati fuerint. Praesenti in perpetuum valituro, absque ulla Apostolicarum Litterarum in forma brevi expeditione et contrariis quibuslibet minime obstantibus.

Datum Romae, ex aedibus S. Paenitentiariae Apostolicae, die 21 Novembris 1945.

N. CARD. CANALI, *Paenitentiarius Maior.*

L. * S.

S. LUZIO, *Regens.*

II

DUBIA

DE PIO EXERCITIO VIAE CRUCIS

Sacrae Paenitentiariae Apostolicae dubia quae sequuntur pro opportuna solutione proposita fuerunt:

I. Utrum norma decreti d.d. 6 Augusti 1757, quo statuitur ut pro pio exercitio Viae Crucis, quando perturbatio excitari potest, unoquoque de populo suum locum tenente, sacerdos cum duobus clericis sive cantoribus circumeat ac sistens in qualibet statione ibique recitans consuetas preces, ceteris alternatim respondentibus, valeat tantum pro publico *Viae Crucis* exercitio in ecclesia peracto vel etiam quando a religiosis peragitur in suis oratoriis?

II. Utrum in circumstantiis de quibus in decretis d.d. 27 Februarii 1901 et 7 Maii, 1902, quando scilicet in oratoriis religiosorum ob angustiam loci omnes religiosi simul a statione ad stationem sine perturbatione procedere nequeunt, ipsi Indulgentias pio Viae Crucis exercitio adnexas lucrari possint, si unus tantum religiosus vel, respective, una tantum religiosa circumeat et ad quamlibet stationem suetas preces praelegat, ceterique suo loco manentes, inibi pro qualibet statione exurgant et genuflectant?

III. Utrum in iisdem circumstantiis iam relatis pro religiosis et methodo ab ipsis servata, christifideles qui vitam communem agunt, de quibus in can. 929 C.I.C., Indulgentias pro pio Viae Crucis exercitio adnexas lucrari possint, si unus vir vel, respective, una mulier stationes Viae Crucis circumeat et suetas orationes recitet?

Et Sacra Paenitentiaria Apostolica die 25 Ianuarii vertentis anni respondendum censuit:

Ad I. *Affirmative* ad primam partem, *negative* ad secundam.

Ad II et III. *Affirmative*.

Facta autem de praemissis relatione Ss^{mo} D.N. Pio div. Prov. Pp. XII ab infrascripto Cardinali Paenitentiarario Maiore in Audientia diei 18 huius mensis, idem Ss^{mus} Dominus resolutionem Sacrae Paenitentiariae approbavit, confirmavit et publicandam mandavit.

Datum Romae, ex Aedibus Sacrae Paenitentiariae, die 20 Martii 1946.

N. CARD. CANALI, *Paenitentiararius Maior*.

L. * S.

S. LUZIO, *Regens*.

PONTIFICIA COMMISSIO

AD CODICIS CANONES AUTHENTICE INTERPRETANDOS

RESPONSA AD PROPOSITA DUBIA

Emi Patres Pontificiae Commissionis ad Codicis canones authentice interpretandos, propositis in plenario coetu quae sequuntur dubiis, responderi mandarunt ut infra ad singula:

I—DE FIDELIUM ASSOCIATIONIBUS

D. An canon 692 ita intelligendus sit ut: *ad fruendum associationis iuribus, privilegiis, indulgentiis aliisque gratiis spiritualibus*, necessaria quoque sint pia opera ad id legitime praescripta.

R. *Affirmative*.

II—DE IURE FUNERANDI

D. An ad normam canonis 1216 § 1, collati cum canone 1226 § 1, sepulcrum maiorum in aliqua ecclesia constitutum habendum sit post Codicem tamquam legitima electio ecclesiae funerantis.

R. Negative.

III—DE IURE ACCUSANDI MATRIMONIUM

D. An inhabilitas coniugis ad accusandum matrimonium, a canone 1971 § 1 n. 1 statuta, secumferat incapacitatem standi in iudicio, ita ut sententia vitio insanabilis nullitatis laboret iuxta canonem 1892 n. 2.

R. Negative.

Datum Romae, e Civitate Vaticana, die 4 Ianuarii, a. 1946.

CARD: M. MASSIMI, *Praeses*.

L. * S.

I. BRUNO, *Secretarius*.

CONDEMNATION OF *Don Basilio*

The Sacred Congregation of the Holy Office has condemned the satirical weekly, *Don Basilio*.

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CEREMONIES OF BEATIFICATION

On October 20 the ceremonies of beatification were held for Venerable Maria Teresa de Soubiran, Foundress of the Society of Mary, Help of Christians.

On October 27 these ceremonies were held for Venerable Eustochio Teresa Verzeri who founded the Daughters of the Sacred Heart.

On November 24, these ceremonies were held for twenty-nine martyrs who lost their lives in the Boxer Rebellion in China in 1900, among them Bishop Benjamin Grassi, Bishop Francis Fogolla, and the latter's coadjutor, Bishop Antonine Fantosati, all members of the Order of Friars Minor. Indeed, all, except three lay servants of Bishop Grassi, were members of that Order, priests, brothers, sisters and lay servants of Bishop Grassi; the lay servants were members of the Third Order.

* * * *

PASTORAL OF THE GERMAN HIERARCHY

The pastoral of the German Hierarchy consists of five thousand words. It enters a plea that the family be saved, explaining the Church's teaching in regard to the family. It argues for the release of war prisoners as a necessary measure to save the family and asserts the claim of the family to aid from the state in the way of housing, favorable taxation, and social opportunities. It affirms also the right of Catholic families to Catholic schools aided by taxes.

SECULAR

THE NEW JERSEY BUS LAW

On November 19 the Supreme Court of the United States heard a two-hour presentation of the case of the New Jersey taxpayer protesting against the payment of bus fares to the parents of Catholic children for their transportation to Catholic schools. The statute of New Jersey under which this payment was made has been held constitutional by the Court of Errors and Appeals of New Jersey. The appellees before the Supreme Court of the United States were the Board of Education of the Township of Ewing et al. The Board's action, seized by the taxpayer as the issue before the court, was its resolution, under the statute, to provide transportation of its school children for the year 1942-1943, in conformity with which \$357.74 was spent to defray transportation costs of twenty-one pupils from the Township to non-profit parochial schools in Trenton. In bringing the case before the Supreme Court of the United States, the appellant's contention was that the underlying statute violated not only the constitution of New Jersey but also that of the United States inasmuch as the authorized payments constitute an establishment of religion. Supporting briefs were filed in his interest by the Seventh Day Adventists and the Baptists. A supporting brief for the appellees was filed by the National Council of Catholic Men and the National Council of Catholic Women. The decision of the Supreme Court of the United States has not been rendered as we go to press.

* * * * *

DEFEAT OF BUS TRANSPORTATION AMENDMENT

In the State of Wisconsin, the Catholic population of which is only twenty-nine per cent of the total population, the proposed

amendment to the constitution of the State, which would have permitted bus transportation in public school buses of children attending private and parochial schools, was defeated on November 5 by a 5-4 vote.

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SUMMARY OF BUS TRANSPORTATION LAWS

A 257-page volume, *School Bus Transportation Laws in the United States*, has been compiled and published by the Legal Department of the National Catholic Welfare Conference with an introduction by William F. Montavon, Director.

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INFANT'S VIOLATION OF LEASE

The Supreme Court of Ohio in a 4-3 decision has overruled the decision of two lower courts and has declared it a violation of contract for a couple to have a baby and stay in an apartment when the lease specifies that it is rented to adults only.

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REPAIRS UNDER OPA REGULATIONS

Construction or repair work may be done without an OPA permit on parish halls, churches, hospitals, schools, colleges and buildings used exclusively for charitable purposes when the cost does not exceed one thousand dollars, and on rectories and college offices when the cost does not exceed four hundred dollars. In the case of college offices, it is required that they be housed in a building on a campus owned by a college.

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EUTHANASIA BILL IN NEW YORK

Rt. Rev. Msgr. Robert E. McCormick, Officialis of the Archdiocesan Tribunal of New York, at the annual "Red" Mass for the Catholic lawyers of Westchester County, denounced voluntary euthanasia recently endorsed by a group of leading Protestant clergymen and a proposed bill to legalize voluntary euthanasia.

In another address, at the communion breakfast of the Notre Dame Club of New York, Monsignor McCormick advocated legislation that would compel physicians who are members of the Euthanasia Society to record that fact on their "shingles" and in their telephone listings. This would put their patients on guard against sponsors of a bill that would ultimately legalize the killing

by physicians of "all undesirables, young and old, the incurably sick, mental defectives, the insane, and even habitual criminals" and bring the state a step closer to totalitarianism.

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BUS TRANSPORTATION IN LOUISIANA

An opinion of a previous Attorney General was reaffirmed by Attorney General Fred S. Le Blanc. Its import is that Louisiana parish school boards may provide bus transportation for children attending private and parochial schools approved by the State Board of Education. It holds that the statute authorizing this action, Act 202 of 1928, is no more objectionable than Act 100 of the same year which authorized the giving of the use of free textbooks to the same children.

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CONFRATERNITY BIBLE COURSE IN TEXAS

The Texas State Board of Education has authorized credits for a program of Bible study classes sponsored by the Confraternity of Christian Doctrine throughout the Archdiocese of San Antonio for Catholic students attending public high schools.

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RELEASED TIME IN SOUTH DAKOTA

The Attorney General of South Dakota has ruled that on the application of a parent or guardian any school pupil may be excused one hour a week for religious instruction.

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STATES PERMITTING RELEASED TIME

Rev. Joseph B. Collins, S.S., Director of the National Center of the Confraternity of Christian Doctrine, reports that released time is available in twelve states under statute and in ten others in virtue of rulings by the Attorney General or by educational boards. Legislation authorizes released time in California, Indiana, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, South Dakota, and West Virginia. Rulings authorizing it have been given in Illinois, Nevada, Connecticut, Delaware, Nebraska, New Jersey, Rhode Island, Ohio, Idaho and Utah.

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RELIGIOUS CURRICULUM IN KENTUCKY

The Attorney General of Kentucky has ruled that the teaching of religion is not a part of the regular school curriculum, stating that

if it were, it would probably be unconstitutional. The reading of the Bible, he held, is not thereby excluded, provided that no opinion is expressed on the text read.

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BUILDING TAX ON TAX-EXEMPT LAND

Kentucky's highest court, the Court of Appeals, has held that taxes must be paid on a bus terminal building erected on tax-exempt land owned by the Southern Baptist Theological Seminary.

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TAX EXEMPTION IN NEW MEXICO

The tax exemption of church property in New Mexico has been qualified by a constitutional amendment approved in the elections of November fifth. It excludes from this privilege liens accumulated on property before its acquisition by a tax-exempt body, whether the liens arise from taxes or from bonded indebtedness.

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UNIFORM HOSPITAL LICENSING LAWS

A model statute for uniform hospital licensing laws in the various states has been developed by the Council of State Governments and Federal Administration Agencies.

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RELIGIOUS EDUCATION OF INDIANS

The executive committee of the Union of Saskatchewan Indians, allegedly representing eleven thousand Indians, has submitted to the Dominion Government a brief asking for the separation of religion from education, from social work and relief, and from other measures carried out among Indians.

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RELIGIOUS ELEMENTS IN BRAZIL'S CONSTITUTION

The constitution of Brazil, recently approved by the Constituent Assembly, bases its democratic form of government on the acknowledgment of God's sovereignty, the affirmation of the freedom of conscience and of religion, the confirmation of the indissolubility of marriage, and the establishment of religious teaching in the public schools. It provides also for the maintenance of diplomatic relations with the Holy See.

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RELIGIOUS FREEDOM IN THE SCHOOLS OF NORTH IRELAND

A North Ireland educational bill would make it possible for pupils at any voluntary or county school to be excused from collective worship or religious instruction, if their parents desire it. It would also permit teachers to be excused from conducting "undenominational" religious instructions upon request and on the ground that their religious belief requires it.

* * * * *

COMMISSION ON POPULATION IN JAPAN

The recommendations of a commission appointed to regulate the population of Japan provide for contraception; permissive abortion and compulsory abortion for cause when conception is due to rape, error or ignorance; sterilization and castration; and a registration program to insure the sterilization of the unfit.

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CATHOLIC REPRESENTATION IN SLOVAKIA

Thirty per cent of the votes in Slovakia are controlled by the communists who hold five seats in the administration. The Democratic Party, supported by Catholics, holds eight posts in the administration. A "non-partisan" general heads the Department of the Interior, controlling the police. A Catholic priest is listed as head of the Department of Administration.



THE MONROE DOCTRINE

(Contained in Monroe's Message to Congress, December 2, 1823)

We owe it, therefore, to candor and to the amicable relations existing between the United States and those [European] powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintain it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by an European power in any other light than as the manifestation of an unfriendly disposition toward the United States.

Reviews

BOOKS

P. Theodosius Haluščynskyj, O.S.B.M., ACTA INNOCENTII PP. III (1198-1216), e registris Vaticanis aliisque eruit introductione auxit, notisque illustravit, Fontes, Series III, volumen II, Pontificia Commissio ad Redigendum Codicem Iuris Canonici Orientalis, Typis Polyglottis Vaticanis MCMXLIV, L. 450.00, XXXII and 674 pp.

The great enterprise of a codification of Oriental Canon Law was formally inaugurated in 1929 with the appointment of a preparatory commission by Pope Pius XI. Technically the work was divided between two committees, one for the actual preparation of the *Codex Iuris Canonici Orientalis*, the other for the compilation of the sources. In 1935 the work was so far advanced that an Editorial Commission could be established wherein, under the presidency of the Secretary of the Sacred Congregation for the Oriental Church—then Cardinal Sincero, and now Cardinal Tisserant—a committee of eminent Cardinals and scholarly experts proceeded with their task of preparing the final text of the future *Codex Iuris Canonici Orientalis*. While the eventual promulgation of this work as the Code of Canon Law of the Oriental Catholics, the counterpart to the *Codex Iuris Canonici* of the Latin Church, is still a matter of decision of the Pope, we enjoy the fruits of the painstaking labor of the experts who have been, and still are compiling the sources in an ever increasing number of publications. It was the intention, from the very outset of this enterprise, to make most of the work of the experts public, and not to restrict it to the use of those whose advice was sought in the preparation of the Oriental Code. As a result two series of *Fonti* were published, dealing foremost with the law of the five oriental disciplines, and the particular law of their subdivisions as well as outstanding portions of the laws and commentaries of the Dissidents. More recently a Third Series was added to the *Fonti*,¹ apparently devoted to Oriental Pontifical law, and to the pertinent enactments of the Oecumenical Councils.

¹ This series is also listed as *Fontes*.

It was a most fortunate choice that the work on the second volume of this Third Series, the ACTA INNOCENTII PP. III, was entrusted to a scholar of eminent qualification, Rev. Theodosius Haluščynskyj, O.S.B.M.

The importance of the legislative work of Innocent III for the development of Canon Law is recognized by canonists in general, but so far a comprehensive compilation of that segment of the Pope's work which was especially intended for the Oriental Church was missing. This is even more astonishing in view of the rôle this law played in the times of the Crusades and the Latin Patriarchate of Constantinople, as well as in the ecclesiastical history of other nations of the Christian Orient. Going through Fr. Haluščynskyj's monumental work one realizes how well he did in choosing as the device of the volume the words inscribed at the monument of this great Pope in the Lateran Basilica:

SAPIENTIAM EIUS
ENARRABUNT GENTES
ET LAUDEM EIUS
ENUNTIABIT ECCLESIA

The author divided his edition into two principal divisions. The first division is primarily analytical and descriptive, while the second is devoted to the documents in particular.

Pars Prima of the first division is an analysis of the sources of manuscripts, and of the principal editions of documents of Pope Innocent III. It offers a wealth of information, and represents the most recent and most complete investigation of all available sources. Space alone does not permit us to discuss some of Fr. Haluščynskyj's findings and conclusions.

Pars Secunda of the same division offers in its *liber primus* a fine critical survey of the history of the Christian Orient in the times of Innocent III. It begins with an outline of the history of the Latin States of Jerusalem, Cyprus and Antioch, and of the *Regnum Armeniae Parvae*. Although well composed, this first book has not received the same minute attention as the following *liber secundus* and *tertius*.

The second book is devoted to the ecclesiastical history of the Southern and Eastern Slavs, and their relation with Pope Innocent III. Here the author apparently enters the field of his special interest and research. It is one of the several high lights of the entire

work, revealing the profound scholarship of its author. The writing of the ecclesiastical history of these people has been—and is even more today—apt to offer a temptation to the writer to succumb to a partial interpretation both from the point of view of religion as well as nationalism. Fr. Haluščynskyj approached his problem with utmost impartiality, and bases his conclusions on fair judgment and truly scientific criticism. His view is not focused on only one of the nations concerned, looking at the history of the other nations in the light of one of them. Nor does he paint ecclesiastical history as a black-and-white affair, stressing the merits of one side, and leaving the rest in the shadow of partial criticism. On the contrary, his outlook is broad and general, and the weight of his criticism is fair-minded and noble. In our opinion—and we have been devoting the better part of our own scientific interest and research to this problem—the ecclesiastical history and that of the Canon Law of what we should like to describe here as the Eastern Central European area stands on its own feet. There is the cross-road where the Latin and the Byzantine doctrines and cultures were transformed into a peculiar, but indigenous system. To find this process masterfully expressed in the author's work, made the reading particularly enjoyable for us.

This section embraces the history of Serbia and Bosnia, Bulgaria and Blachia (Romania), Hungary and "Ruthenia", in particular the principalities of Halytsh and Volodimir. Again we refrain from going into detail, but we should like to mention Fr. Halyščynskyj's thesis of the "Episcopatus filiorum Beleknese" which he identifies, with much better arguments than ever before attempted, with that one established in the "City of Saint Demeter", the modern Mitrovitza.

The third section (*liber tertius*) of the *Pars Secunda* is dedicated to the history of Pope Innocent III's endeavors to bring about a reunion between the separated Greeks of Byzantium and the Church of Rome. Here, too, the author's effort of impartial judgment is successfully devoted to the highly controversial issue of the Latin Patriarchate of Constantinople, and the effects of the secular interests of the Crusaders on the Pope's ecclesiastical aims. Fr. Haluščynskyj is by no means an apologist for the "Latins". He does not overlook the shortcomings and dangers of the policy of ecclesiastical and secular leaders which eventually caused the Pope's en-

deavors to be met with failure. However, he clearly pictures the Pope's great struggle for union above and in spite of mistakes and frustration.

The second division of the work concerns the ACTA itself. It is divided into three parts to which an appendix is added. *Pars Prima* is preceded by a chronological index and followed by 222 pontifical documents in the order of the 19 years of the Pope's reign. An exception to this is # 222, which could not be dated otherwise for lack of better identification. It is an Apostolic confirmation of the rights and privileges of the monastery of Grottoferrata. *Pars Altera* is a similar collection of documents of the IV Lateran Council (1215) regarding the Oriental Church. *Pars Tertia* lists the pontifical letters sent to Latins in Oriental territories. The appendix completes this collection with letters sent to the Pope by various ecclesiastical and civil authorities in matters pertaining to the Oriental Church.

The method and the arrangement of the ACTA meet all the requirements of a modern edition. Each document is provided with an adequate description. A maze of footnotes accompanies the entire work revealing not only a thorough knowledge of, but also the appropriate application of an extensive bibliography.

The work is completed with several charts and indices, and a map of the *Oriens Christianus* at the times of Innocent III. The charts call for special attention, in particular Tab. III—*Sedium Patriarchalium, Archiepiscopalium et Episcopalium in litteris occurrentium*. This is a most helpful addition. The *Index Canonico-Analyticus* will please every canonist.

Thus, the work is a masterpiece of scholarship from the beginning to the end. The author is to be congratulated on the successful accomplishment of it. Its usefulness extends far beyond the purpose for which it was originally planned. We sincerely hope it will inspire many students to make use of this able presentation of the Oriental Acts of this great Pope for monographic research in the field of Oriental Canon Law.

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THE FOUNDATION OF GOVERNMENT

I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth, that God governs the affairs of men, and if a sparrow cannot fall without His notice, is it probable that an empire can rise without His assistance? I firmly believe that without His aid we shall succeed in our political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and byword to future ages. And what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war, and conquest.—Franklin, arguing for daily prayer in Congress (1787).

Chronicle

GENERAL

One hundred and twenty-four members of the Hierarchy of the United States attended the annual meeting at The Catholic University of America, November 13-15. All four of the Cardinals were present and sixteen archbishops. At the end of the meeting a statement was issued in their name. The theme of the statement is the necessity of basing world peace on an understanding of the nature of man. It is the question of what man is, the statement insists, that hangs in the background of the conflict between Russia and the West. It is this question, it affirms, that underlies the problems involving the fate of prisoners of war, the use of the latter in slave labor, the compulsory return of war exiles to their native land, and the treatment of displaced persons. It asserts that we cannot recede from what has been held sacrosanct in our culture.

At the meeting of the hierarchy the members of the Administrative Board of the National Catholic Welfare Conference were elected for the following year. Most Rev. John T. McNicholas, O.P., S.T.M., Archbishop of Cincinnati, was elected Chairman of the Board; Most Rev. John G. Murray, D.D., Archbishop of St. Paul, Vice Chairman of the Board and Chairman of the Press Department; Most Rev. Joseph F. Rummel, D.D., Archbishop of New Orleans, Chairman of the Legal Department; Most Rev. John J. Mitty, D.D., Archbishop of San Francisco, Chairman of the Department of Catholic Action Study; Most Rev. Robert E. Lucey, D.D., Archbishop of San Antonio, Chairman of the Department of Lay Organizations; Most Rev. James H. Ryan, D.D., Archbishop of Omaha, Chairman of the Department of Education; Most Rev. Richard J. Cushing, D.D., Archbishop of Boston, Chairman of the Youth Department; Most Rev. John M. Gannon, D.D., Bishop of Erie, Treasurer of the Board; Most Rev. Michael J. Ready, D.D., Bishop of Columbus, Secretary of the Board; and Most Rev. Karl J. Alter, D.D., Bishop of Toledo, Chairman of the Department of Social Action. Besides these ten members of the Board, the following were named as assistants to respective Episcopal Chairmen of Departments; Most Rev. Thomas K. Gorman, D.D., Bishop of Reno, Press Department; Most Rev. John F. O'Hara, C.S.C., D.D., Bishop of Buffalo, Department of Catholic Action Study.

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Reports were made at the meeting of the Administrative Board of the National Catholic Welfare Conference by the Episcopal Chairmen of the various Departments. His Eminence, Samuel Cardinal Stritch, Chairman of the Board, reported that the Immigration Bureau had handled during the year 19,389 cases involving 40,625 persons. Most Rev. John G. Murray, D.D., Chairman of the Press Department, stated that seven new Catholic publications had been launched and that the News Service is being used by Catholic papers in thirty-four foreign countries. Most Rev. James H. Ryan, D.D., Chairman of the Education Department, reported that the Department had supported the

formation of the Catholic Commission on Intellectual and Cultural Affairs; had participated in the educational mission to Japan sponsored by the War and the State Departments; and had sent its Director as a consultant to the United States delegation to the first general assembly in Paris of the United Nations Educational, Social, and Cultural Organization (UNESCO). Most Rev. Karl J. Alter, D.D., Chairman of the Social Action Department, reported the cooperation of the Catholic Association for International Peace with the UNO meetings in San Francisco through the attendance of three representatives; the success of the Inter-American Catholic Seminar of Social Studies in Havana; the preparation of a "Catholic Social Manifesto"; and the meeting of four industrial conferences in as many cities. Most Rev. Richard J. Cushing, D.D., Chairman of the Youth Department, reported five regional conferences for diocesan directors and other forms of assistance rendered the latter in more than ninety per cent of the dioceses of the United States. Most Rev. Edwin V. O'Hara, D.D., Chairman of the Committee on the Confraternity of Christian Doctrine, reported the official functioning of the Confraternity in twenty-one archdioceses and ninety-one dioceses and the distribution of more than a half-million prayer leaflets in thirty dioceses in a crusade of prayer for the promotion of religious instruction and the canonization cause of Pope Pius X. Most Rev. John F. Noll, D.D., Chairman of the Department of Lay Organizations, reported the existence of seventy-five diocesan councils of the National Council of Catholic Women; and the broadcasting of the Catholic Hour over one hundred six stations. The business office reported the distribution of nearly three hundred thousand pamphlets and of more than a million pieces of literature in connection with the drive for the Bishops' War Emergency and Relief Collection.

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On November 23 President Truman announced that Hon. Myron C. Taylor was returning to Rome to represent him at the Vatican City for at least thirty days.

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Our Holy Father, acknowledging a cablegram of official homage sent him by the Hierarchy of the United States on the occasion of its annual meeting, replied to His Eminence, Dennis Cardinal Dougherty, sending a special Apostolic Blessing.

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On November 24, our Holy Father sent a radio message to the United States on the occasion of the commemoration of the third centenary of the death of the first North American martyr saints, the French Jesuit Isaac Jogues and his fellow martyrs.

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On November 30, our Holy Father accepted the credentials of Rudolph Kohlruss, Austrian Plenipotentiary, who had previously represented Austria at the Vatican before the *Anschluss*.

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On November 3, Archbishop Liberato Tosti, new Papal Nuncio to Paraguay, was consecrated Titular Archbishop of Leucade in the Cathedral at Buenos Aires.

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Archbishop Maurillio Silvani, aged 64, has been named Apostolic Internuncio in Austria.

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On September 3, our Holy Father received in audience the Attorney General of the United States, Hon. Tom C. Clark.

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The members of the Roman Curia made their annual retreat during the first week of Advent.

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The Hierarchy of the United States at its meeting decided upon a call for five million dollars for the 1947 National Catholic War Emergency and Relief Committee, to be collected during the week of Laetare Sunday, March 16-23.

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Plaques commemorating the visit of our Holy Father were dedicated in the Cathedral of St. Paul, St. Paul, Minnesota; on the San Francisco-Oakland Bay Bridge; and at the Kansas City Municipal Airport.

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The forty-first annual meeting of the Catholic Church Extension Society was held in Chicago on November 18, with His Eminence, Samuel Cardinal Stritch, presiding. Most Rev. William D. O'Brien, D.D., its president, reported the expenditure of two million dollars among the needy missions of the United States; one million dollars for the building and the renovation of mission churches; and a half million for the education of students of the missionary priesthood and as subsidies for needy missionary priests.

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On the Feast of the Immaculate Conception, the Most Rev. Apostolic Delegate celebrated Pontifical Mass at the Shrine of the Immaculate Conception, Washington, D. C. The sermon of the occasion was preached by Most Rev. John F. Noll, D.D., who announced that the Hierarchy at its recent meeting had agreed to complete the Shrine.

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On Thanksgiving Day, the Most Reverend Apostolic Delegate celebrated Pontifical Mass at St. Patrick's Church, Washington, D. C. The sermon was preached by Most Rev. Lawrence J. Shehan, D.D.

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A portrait of Diomed Cardinal Falconio by Thomas Eakins was donated to the National Gallery of Art by Stephen C. Clark. Cardinal Falconio was Apostolic Delegate to the United States from 1902 till 1911.

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On October 13, His Eminence, Dennis Cardinal Dougherty, presided at a solemn Mass in the Cathedral of SS. Peter and Paul, opening the National Laywomen's Retreat Congress. Most Rev. Richard J. Cushing, D.D., Archbishop of Boston, addressed the delegates at a luncheon on October 12.

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On November 19, His Eminence, Samuel Cardinal Stritch, observed the silver jubilee of his episcopal consecration, the date of which was November 30, 1921.

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On October 23, His Eminence, Samuel Cardinal Stritch, presided and preached the sermon at a solemn Mass observing the twenty-fifth anniversary of St. Mary of the Lake Seminary and Mundelein University.

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On November 30, Most Rev. Michael J. Curley, D.D., Archbishop of Baltimore and Washington, observed the silver jubilee of his transfer to the Archdiocese of Baltimore.

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On November 25, His Eminence, Samuel Cardinal Stritch, preached the sermon at the Pontifical Mass celebrated in St. Agnes' Church, Cleveland, Ohio, by Most Rev. Edward F. Hoban, D.D., Bishop of Cleveland, observing the twenty-fifth anniversary of the latter's consecration.

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Most Rev. Thomas M. O'Leary, D.D., Bishop of Springfield, Massachusetts, celebrated the twenty-fifth anniversary of his consecration, receiving the congratulations of President Truman on the occasion.

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On December 8, the Diocese of Kansas City was dedicated to the Immaculate Heart of Mary in ceremonies following Pontifical Mass in the Cathedral of the Immaculate Conception. Similar ceremonies were conducted in parish churches with an appropriate uniform prayer.

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A joint meeting of members of the Hierarchy of the United States and of Mexico was held at Montezuma Seminary, Las Vegas, New Mexico, to discuss problems connected with the maintenance of that nine-year old institution.

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A seminar for students of secular law has been established at Iowa State University, consisting of twelve lectures given by Very Rev. Msgr. J. D. Conway, J.C.D., Rev. Thomas J. Feeney, J.C.D., and Rev. Maurice J. Dingman, J.C.D.

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The City Council of Chicago authorized a resolution calling attention to the city-wide observance on September 24, of the centenary of the coming of the Sisters of Mercy to Chicago.

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His Eminence, Francis Cardinal Spellman, honored the ceremonies marking the apparition of the Blessed Virgin at La Salette, held at La Salette Seminary, Hartford; His Eminence, Cardinal Villeneuve, the ceremonies at La Salette Seminary, Enfield, New Hampshire; Most Rev. Richard J. Cushing, D.D., the ceremonies at the La Salette Shrine, Ipswich, Massachusetts; Most

Rev. Edmond F. Gibbons, D.D., the ceremonies at La Salette Seminary, Altamont, N. Y.; and Most Rev. Thomas L. Noa, D.D., the ceremonies at La Salette Missionary College, Milford, Iowa.

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The centenary of the founding of the Society of the Holy Child Jesus was observed with a solemn Pontifical Mass in the Cathedral of SS. Peter and Paul, Philadelphia.

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Most Rev. Henry P. Rohlman, D.D., Archbishop of Dubuque, celebrated Pontifical Mass in the Convent of the Visitation Sisters to honor the seventy-fifth anniversary of their coming to Dubuque.

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The twenty-third biennial convention of the National Council of Catholic Women was held in Kansas City September 21-25. It was opened with a Pontifical Mass, celebrated by the Most Rev. Apostolic Delegate. The sermon was preached by Most Rev. Emmet M. Walsh, D.D., Bishop of Charleston.

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The eighth national convention of the Confraternitiy of Christian Doctrine was held in Boston October 25-29. The convention was addressed by radio on October 27 by our Holy Father. On that day also a Pontifical Mass was celebrated by the Most Rev. Apostolic Delegate. The sermon at the Mass was preached by Most Rev. Richard J. Cushing, D.D. The convention determined upon an annual award of a medal to be called the Pius X Medal.

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The twenty-fourth annual National Rural Life Conference was held in Green Bay October 11-15. Pontifical Mass was celebrated on October 13 in St. Francis Xavier's Cathedral by Most Rev. Stanislaus V. Bona, D.D. The sermon was delivered by Most Rev. Peter W. Bartholome, D.D., Coadjutor to the Bishop of St. Cloud.

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October 14-17 the seventh annual Liturgical Week was held in Denver.

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December 27, 28, the annual meeting of the American Philosophical Association was held in Toronto.

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The sixteenth annual convention of the Chaplains' Association of the Army and Navy chaplains was addressed by His Eminence, Francis Cardinal Spellman. Very Rev. Robert J. White, J.C.D., was elected President.

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On December 27, the eighth annual convention of the American Catholic Sociological Society was held in Chicago.

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On September 24, Most Rev. Joseph F. Rummel, D.D., celebrated a Pontifical Mass in St. Patrick's Cathedral, New York, opening the sixth national convention of the Diocesan Directors of the Society for the Propagation of the Faith. The sermon was preached by Most Rev. Richard J. Cushing, D.D.

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Edward McClements, of Charlotte, was elected President of the North Carolina Catholic Laymen's Association at the first meeting of the Board of Directors in Charlotte.

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August 29-31, the twenty-fifth annual convention of the Phi Kappa fraternity was held in La Fayette, Indiana, opening with a memorial high Mass in St. Mary's Cathedral.

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Most Rev. Aloisius J. Muench, D.D., Bishop of Fargo and Apostolic Visitor to Germany, celebrated the Mass opening the twentieth international Pax Romana Congress at Fribourg. The Congress was attended by six hundred delegates from forty-one countries.

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On October 12, Judge John E. Swift, of Boston, Supreme Knight of the Knights of Columbus, delivered a Columbus Day address on a coast-to-coast network of the Mutual Broadcasting Company.

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On November 12, Cardinal Camillo Caccia Dominioni died at the age of 69. He had the honor of proclaiming and crowning the present reigning Supreme Pontiff.

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During the meeting of the Hierarchy, Most Rev. Joseph E. Ritter, D.D., celebrated a Pontifical Requiem Mass, in the Shrine of the Immaculate Conception, for the repose of the soul of His Eminence, John Cardinal Glennon, in the presence of the Most Rev. Apostolic Delegate. The sermon was preached by Most Rev. John T. McNicholas, O.P., S.T.M.

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On September 28, Most Rev. John R. Hagan, D.D., died. The funeral Mass was celebrated by Most Rev. Edward F. Hoban, D.D., Bishop of Cleveland. The sermon was preached by Most Rev. John T. McNicholas, O.P., S.T.M.

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On October 29, His Eminence, Samuel Cardinal Stritch, celebrated the funeral Mass for the late Most Rev. John B. Morris, D.D., Bishop of Little Rock. Bishop Morris had been Bishop of Little Rock since 1907. He was made Assistant at the Pontifical Throne in 1931.

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On November 22, Most Rev. Joseph E. Ritter, D.D., celebrated the funeral Mass of Most Rev. Christian H. Winkelmann, D.D., third Bishop of Wichita, who died on November 18. The sermon was preached by Most Rev. Paul C. Schulte, D.D.

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On December 2 Most Rev. Richard J. Cushing, D.D., celebrated in the Cathedral of the Holy Cross the funeral Mass for Most Rev. Louis F. Kelleher, D.D.; the sermon was preached by His Eminence, Francis Cardinal Spellman.

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Most Rev. Bartolomew Eustace, D.D., Bishop of Camden, preached the eulogy at the solemn Requiem Mass celebrated in the Church of St. Francis of Assisi, New York, for the repose of the soul of Most Rev. Valentine Schaaf, O.F.M., J.C.D.

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Rt. Rev. Albert Beston, O.C.S.O., Abbot of the New Melleray Monastery of the Cistercians of the Strict Observance, died at the age of 65.

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His Eminence, Samuel Cardinal Stritch, celebrated the funeral Mass of Abbot Procopius Neuzil, O.S.B., who died December 1 at the age of 85. The sermon was preached by Most Rev. William D. O'Brien, D.D.

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Rt. Rev. Ildefons Herwegen, O.S.B., Abbot of Maria Laach, died at the age of 72.

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Archbishop John M. Harty, D.D., President of the Catholic Truth Society of Ireland, died at the age of 79.

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Monsignor Eugene Merio, international director of the Pontifical Association of the Holy Childhood, died in Paris at the age of 80.

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Rt. Rev. Msgr. Victor Day died at the age of 80. He had been Administrator of the Diocese of Helena, four times.

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Rev. J. Elliot Ross, C.S.P., died.

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On December 12, Rev. F. X. Lasance died in his seventy-eighth year.

DIGNITIES

On October 8 the Most Rev. Apostolic Delegate enthroned Most Rev. Joseph E. Ritter, D.D., Archbishop of St. Louis, in St. Louis Cathedral. The sermon was preached by Most Rev. James H. Ryan, D.D., Archbishop of Omaha.

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On October 10 the Most Rev. Apostolic Delegate enthroned Most Rev. Paul C. Schulte, D.D., Archbishop of Indianapolis, in SS. Peter and Paul's Cathedral.

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On January 9, Most Rev. Joseph E. Ritter, D.D., will install Most Rev. George J. Donnelly, D.D., as the seventh Bishop of Leavenworth.

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Most Rev. Albert L. Fletcher, D.D., has been named Bishop of Little Rock.

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On October 15, Most Rev. Timothy Manning, J.C.D., was consecrated Bishop of Lesvi and Auxiliary Bishop of Los Angeles, by Most Rev. Joseph T. McGucken, D.D., Titular Bishop of Sonavo. The co-consecrators were Most Rev. James E. Walsh, M.M., Titular Bishop of Sata, and Most Rev. Thomas A. Connolly, D.D., Titular Bishop of Sila. The sermon was preached by Rev. Thomas C. Mulligan, S.S., S.T.D.

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Most Rev. Aloysius J. Willinger, C.S.S.R., D.D., has been named Titular Bishop of Bida and Coadjutor to the Bishop of Monterey-Fresno. He had been Bishop of Ponce, Puerto Rico, since 1929.

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Most Rev. Daniel Ivancho, D.D., Coadjutor to the Bishop of the Diocese of Pittsburgh of the Greek Rite, was consecrated November 5 in St. Paul's Cathedral, Pittsburgh. The consecrating prelate was Most Rev. Constantine Bohachevsky, D.D., Bishop of the Ukrainian Greek Rite Diocese of Philadelphia. Co-consecrators were Most Rev. Ambrose J. Senyshyn, O.S.B.M., Auxiliary to the Bishop of the Ukrainian Greek Rite Diocese of Philadelphia, and Most Rev. Basil Vladimir Ladyka, O.S.B.M., of the Ukrainian Greek Rite Diocese of Canada. The sermon was preached by Rt. Rev. Msgr. Fulton J. Sheen.

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Most Rev. Duane G. Hunt, D.D., Bishop of Salt Lake City, has been named Assistant at the Pontifical Throne.

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Most Rev. Francis C. Kelley, D.D., Bishop of Oklahoma City-Tulsa, has received from the Spanish Government the Catholic Grand Cross of Isabella.

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Most Rev. Francis J. Haas, D.D., Bishop of Grand Rapids, has been named by President Truman a member of the newly created 15-man Committee on Civil Rights to strengthen the federal government in dealing with such problems as racial discrimination and mob violence. C. E. Wilson, President of the General Electric Company, has been named Chairman. Francis P. Matthews, former Supreme Knight of the Knights of Columbus, and James B. Carey, Secretary-Treasurer of the CIO, have also been named members.

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Most Rev. Gerald Shaughnessy, S.M., D.D., Bishop of Seattle, received the honorary degree of doctor of laws from Boston College at a special convocation of the faculty and the student body.

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Most Rev Martin J. O'Connor, D.D., Titular Bishop of Thespieae, has been named Rector of the North American College, Rome.

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On the occasion of the observance of the centenary of the founding of St. Vincent's Archabbey, Latrobe, Pa., its Archabbot was given the privilege of wearing the cappa magna. At an academic convocation on the same occasion the Most Rev. Apostolic Delegate honored the Archabbey by accepting the degree of doctor of letters.

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Most Rev. B. I. Webster, D.D., has been named Titular Bishop of Pafo and Auxiliary to James Cardinal McGuigan, Archbishop of Toronto.

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Most Rev. Patrick Dunne, D.D., has been named Titular Bishop of Nara and Auxiliary to Archbishop John McQuaid of Dublin.

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Most Rev. Joseph G. Holland, D.D., of the African Missionary Society, has been named Titular Bishop of Ammaedera and Vicar Apostolic of Lower Volta, Gold Coast, West Africa.

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Most Rev. Joseph Beran, D.D., confined for three years in Dachau, has been named Archbishop of Prague, succeeding Cardinal Kaspar, who died April 21, 1944.

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Most Rev. Paul Yu-Pin, D.D., Archbishop of Nanking, has been named a delegate to represent the Province of Manchuria in China's National Assembly. He is also a member of the 55-member praesidium or steering committee of the Assembly.

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Most Rev. Leopoldo Eijo y Garay, Bishop of Madrid Alcala, Spain, has been named Titular Patriarch of the West Indies as a *personal* honor. The title was created by Pope Clement VII in 1524 for Carlos V of Spain to be held by the chaplain general of the armies of Spain.

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Most Rev. Robert Picard de la Vacquerie, D.D., recently named by the French Government as Chaplain Inspector for the French Occupation forces in Germany, has been consecrated Titular Bishop of Doara.

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Rt. Rev. Msgr. John J. Reilly received his monsignorial robes from the Most Rev. Apostolic Delegate in the Shrine of the Immaculate Conception on December 8.

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The following priests of the Diocese of Pittsburgh have been named Domestic Prelates: Rt. Revs. Francis Beneventano, Henry A. Carlin, Clement J. Hrtanek, Edward J. Misklow, Andrew J. Pauley and Ladislaus Sliwinski.

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Rt. Rev. Frederick J. Hochwalt, Director of the Education Department of the National Catholic Welfare Conference, has been appointed to a 6-man sub-committee, representing religious groups, by the Citizens' Federal Committee, a 27-man advisory group of the United States Office of Education.

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Rev. Edward E. Swanstrom, Assistant Executive Director of the National Catholic Welfare Conference's War Relief Services and Associate Director of the Children's Bureau of the Brooklyn Catholic Charities, has been named Papal Chamberlain.

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Rt. Rev. Walter J. Furlong has been named Chancellor of the Archdiocese of Boston, succeeding Monsignor Jeremiah F. Minihan.

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Very Rev. George T. Schmidt has been named Vicar General of the Diocese of Scranton.

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Monsignor David F. Cunningham has been named Vicar General of the Diocese of Syracuse; and Rev. Robert E. Dillon, J.C.D., has been named Chancellor.

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On September 21 Most Rev. Emanuel Suarez, O.P., former rector of the Angelico, was elected Master General of the Dominican Fathers, succeeding Most Rev. Martin S. Gillet, who served seventeen years. Rev. Timothy Sparks, O.P., has been chosen American Assistant General and Rev. Paul A. Skehan, O.P., Procurator General.

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Rt. Rev. Eugene J. Martin, O.C.S.O., received his blessing as Abbot of the New Melleray Monastery at a Pontifical Mass celebrated by Most Rev. Henry P. Rohlman, D.D., Archbishop of Dubuque.

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On November 7, Rt. Rev. Ambrose Ondrak, O.S.B., D.D., was elected Co-adjutor to the Abbot of St. Procopius' Abbey, Lisle, Illinois. Meantime, the latter has died and the installation of his successor, Abbot Ambrose, is set for January 8.

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Rev. Ildefonso Clerici has been re-elected Father General of the Congregation of Clerks Regular of St. Paul (Barnabites) for a third successive term.

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On October 25, Brother Anthony Wessel, C.F.A., was elected Superior General of the Alexian Brothers.

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Rev. Joseph Imhof has been elected Superior General of the Missionaries of Our Lady of La Salette.

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Brother Leonidas has been elected Superior General of the Marist Brothers at their fourteenth general chapter held in Italy.

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Rt. Rev. Frederick G. Hochwalt and Very Rev. Edward V. Stanford, O.S.A., represent Catholic organizations on the United States National Commission on Educational, Scientific and Cultural Cooperation. Helen C. White, 1942 Laetare Medal winner, is also a member.

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Rev. Robert I. Gannon, S.J., President of Fordham University, has been elected President of the New York Academy of Public Education.

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Rev. Samuel Hill Ray, S.J., of Loyola University, New Orleans, has been named national chaplain of the Amvets at a four-day convention of the organization held in St. Louis.

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Joseph P. Kennedy, former United States Ambassador to Great Britain, and Frederick W. Mansfield, former Mayor of Boston, have been made Knights of the Equestrian Order of the Holy Sepulchre.

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Francis P. Matthews, of Omaha, has received the Presidential Award of the Medal of Merit for "exceptionally meritorious conduct in the performance of outstanding services to the United States" during the war emergency as an organizer and leader of the USO-NCCS welfare program for the men of the armed forces.

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David Goldstein has received the 1946 Catholic Action Medal from St. Bonaventure's College.

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Professor Charles Coale Price III, head of the University of Notre Dame Department of Chemistry, has received the \$1,000 American Chemical Society Prize in Pure Chemistry for 1946.

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THE CANON LAW SOCIETY OF AMERICA

On November 17, 1946, The Canon Law Society of America convened for its eighth annual meeting. Members in attendance assembled at 3:00 P. M. in the Pennsylvania Hotel, New York City. Over one hundred of the Society's members and friends were present. All the officers of the Society were in attendance: the Rt. Rev. Walter J. Furlong, Chancellor the Archdiocese of Boston, President; the Very Rev. John L. Hammill, J.C.D., Chancellor of the Diocese of Ogdensburg, Vice-President; the Rev. Francis B. Donnelly, S.T.L., J.C.D., of the Immaculate Conception Seminary at Huntington, Long Island, N. Y., General Secretary; the Very Rev. John J. Carberry, Ph.D., S.T.D., J.C.D., *Officialis* of the Diocese of Brooklyn, Recording Secretary; the Rev. Clement V. Bastnagel, S.T.L., J.U.D., of The Catholic University of America, Treasurer.

The meeting was honored with the presence of the Most Rev. Valentine T. Schaaf, O.F.M., J.C.D., Superior General of the Order of Friars Minor, on the eve of his departure for Rome after a three months' visitation tour through the United States, Mexico and Canada. Upon the close of the meeting at 6:30 P. M., a large number of the group participated in the dinner-meeting of the Alumni and Friends of The Catholic University of America in the Hotel Pennsylvania at 7:30 P. M.

BUSINESS MEETING

When the meeting had been opened with prayer, the President read the list of the deceased members of the past year: the Rev. Michael P. Boyle, of the Diocese of Pittsburgh; the Rev. George J. Bullion, of the Diocese of Pittsburgh; the Rev. M. J. Lennon, of the Diocese of Sioux Falls; the Rev. Nicholas J. Neuberger, of the Archdiocese of Omaha; the Rev. Cyril Piontek, O.F.M., of the Assumption of the Blessed Virgin Mary Province; the Rt. Rev. Joseph C. Walsh, of the Archdiocese of Boston. A prayer was offered for the repose of their souls.

The President then called on the Rt. Rev. Eric F. MacKenzie of Boston to extend the Society's welcome of and appreciation for the attendance of the Most Rev. Valentine T. Schaaf, O.F.M., at the meeting. In token of the Society's grateful sentiments a gift pen and pencil set was presented.

REPORT ON THE CAMPAIGN FOR THE COLLECTION OF BOOKS AND FUNDS FOR THE CATHOLIC UNIVERSITY OF NIJMEGEN CANON LAW INSTITUTE

Dr. Willibald M. Plöchl of The Catholic University of America offered a detailed report on the campaign for the collection of books, which had been inaugurated on January 23, 1946, the feast of St. Raymond of Peñafort. The Society's successful undertaking stimulated a still wider field of activity on the part of a specially appointed Committee in America for the work of rehabilitating the Library of the Nijmegen Catholic University. The combined efforts of the Society and of the Committee culminated in the collecting and forwarding of over 12,000 volumes from all parts of the country. The Treasurer reported that in addition a sum of \$1,053:00 was collected. A letter revealing the profound appreciation of Cardinal De Jong was read, and Father Peter Mommersteeg, a member of the Committee, to whom the check was presented, responded in grateful words in the name of the Nijmegen University. Thereupon followed the reading of the minutes of the previous national meeting of the Society on November 11, 1945. Drawn up by the Rev. John Leo Dolan, Retiring Secretary, the minutes were read by the Very Rev. John J. Carberry, the Recording Secretary. Without change or addition the minutes were approved for filing with the acts of the Society.

REPORT OF THE PRESIDENT

The President reported on two regional meetings held during the past year in Boston, and likewise on similar regional meetings elsewhere held throughout the country. In the latest regional meeting, held at Columbus, Ohio, November 6th and 7th, and representing sixteen neighboring archdioceses and dioceses, a resolution was drawn up for consideration by the Society in its na-

tional meeting. It was proposed that instead of holding the annual national meeting in New York, in connection with the Alumni Reunion of The Catholic University of America, the Society hold its annual meetings in different parts of the country year by year. The discussion of this resolution by the assembly resulted in the decision that the traditional practice of holding a meeting in connection with the annual Alumni Reunion in New York be retained, but that for its national meeting the Society convene in a city to be designated by a committee which the President was to appoint. Monsignor Furlong left the task of appointing this committee to the incoming President.

REPORT OF THE TREASURER

The Rev. Clement V. Bastnagel presented the Treasurer's report. During the year from November 11, 1945, to November 17, 1946, the Society had collected through subscriptions (\$3,917:49) and through the sale of dissertations in reserve stock with the Society (\$270:41) a total of \$4,187:90. The Society's total expenditure had come to \$2,627:06. Thus there was a net gain of \$1,560:84. To show the current assets of the Society mention was to be made of the \$60:50, which had accrued as interest, of the \$2,017:66, which the Society had on interest at the beginning of the year, and of the \$1,227:76, which the Society then had in its checking account. These items reflected a total of \$4,866:76. Of that amount the sum of \$2,578:16 was bearing interest, and a sum of \$2,288:60 was on hand in the current checking account.

The individual items of expense were distributed as follows: for a patron's ticket at the Annual Reunion of the Alumni and Friends of The Catholic University of America, \$10:00; for the conversion of foreign checks, \$2:06; for refunds, \$28:00; for stationery, \$54:88; for stamps, \$299:06; for dissertations purchased from The Catholic University of America Press, \$147:75; and for 15 lots of dissertations (5160 copies), \$2,085:31.

REPORT ON MEMBERSHIP

It was reported that the current paid-up membership stood at over 400, of which 26 subscriptions had come from Canada, and 2 from Puerto Rico.

REPORT ON DISSERTATIONS DISTRIBUTED

In previous years the Society had distributed 83 separate dissertations in over 19,000 copies to its membership. During the past year it distributed 12 additional dissertations in the amount of about 3,300 copies.

REPORT ON DISSERTATIONS AT HAND FOR DISTRIBUTION

The Society quite recently had received five dissertations—three of the 1945 list, and two of the 1946 list—now ready to be mailed out to the subscribing members. The hope was expressed that the ordered copies of these dissertations could be sent out at the beginning of the New Year.

REPORT ON DISSERTATIONS STILL TO BE PRINTED

The Society was awaiting the shipment and the subsequent distribution of 6 dissertations from the 1944 class, 5 from the 1945 class, and 17 from the 1946 class, a total of 28 dissertations for which reservations and payments had

already been made by the Society's membership. Subscriptions for these 28 dissertations call for the ordering of approximately 10,000 copies, roundly about 350 copies of each dissertation.

REPORT ON THE COST OF THE DISSERTATIONS

The average cost of the dissertations purchased during the past year was over 40 cents apiece. Apart from the \$2:00 membership fee, for the payment of which members could select two copies, all other copies had been sold at 50 cents apiece. The less than 10 cent difference between the cost price and the sale price was not enough to allow for the costs involved in marketing the dissertations. Sky-rocketing costs in printing were a further reason for a proposed advance in the amount of the sale price of the dissertations.

It was suggested that, in view of the uncertainties of future printing costs, the determination of the sale price could more opportunely be left untouched for the present, and relegated to a future time. It was intimated that perhaps the matter should rest with the discretion of the Treasurer, to be decided by him when the order-forms were being circulated among the members. Further discussion was invited from the assembly.

A motion was made and seconded that the fixing of the sale price of the dissertations at the next opportunity for subscriptions should be attended to by the Treasurer. The question was then raised regarding the current \$2:00 membership dues. The Treasurer explained that the dues could well remain at their present rate, and that the needed advance in the sale price could be connected with the remaining dissertations ordered over and above the two to which the payment of the membership fee entitled the subscriber. The original motion was then submitted in this modified sense to the vote of the assembly. The vote indicated unanimous agreement that the amount of the sale price of the dissertations should be set by the Treasurer in such measure that the following year's funds would never have to be used for meeting the previous year's obligations, and that the current assets of the Society would always suffice to cover all potential commitments.

PAPER READ AT THE MEETING

With the work of the business meeting finished, the President introduced the Rev. Francis P. Kearney, J.C.D., of Mount Saint Mary's Seminary, Emmitsburg, Md., who was to lead the discussion on the principles inherent in the statement of canon 1127: "*In re dubia privilegium fidei gaudet favore iuris.*" In a lucidly arranged and closely reasoned discussion Dr. Kearney presented his claims. With the conclusion of the paper the nominating committee had drawn up a slate of candidates for the election of the Society's officers during the coming year. Candidates for the offices of president and general secretary respectively were paired off according to dioceses, so that the vote was to be cast simply through a designation of the diocese in question. Three sets of candidates were submitted: for the Diocese of Albany, Fathers Thomas H. Kay and C. Bernard Alford; for the Diocese of Cleveland, Monsignor Floyd L. Begin and Father Howard Teare; for the Archdiocese of Philadelphia, Fathers Frank X. Wahl and Bartholomew Fair. The relative majority vote fell to Fathers Kay and Alford. For the office of Vice-President

the following candidates were submitted: Canon Bruno Desrochers, of Québec; Father Stanley Fedewa, of Detroit; Father John J. Kealy, of Harrisburg. Canon Desrochers gained the plurality vote. For the office of Recording Secretary the names of the following candidates were on the ballot: Fathers Alfred Julien, of Saint John's Seminary, Boston; John J. Manning, of the Josephinum, Worthington, Ohio; Thomas O. Martin, of The Catholic University of America. Father Martin was elected. For the office of Treasurer the Rev. Clement V. Bastnagel was re-elected by acclamation.

In assuming the chairmanship of the meeting as the new President of the Society Father Kay pledged not only his own earnest efforts but also the sincere endeavors of all the new officers. He promised, through the medium of the committee he had been authorized to appoint, to make all suitable and needed arrangements regarding the next annual meeting of the Society in line with the mandate that it be held in some centrally located city.

The time that still remained was then turned to profitable account by means of an open floor discussion of Dr. Kearney's paper. Numerous points of practical interest were raised, and the leader of the discussion ably satisfied his questioners with his precise explanations and clarified replies. When the last available bit of time had been utilized, the assembly voted for adjournment at 6:30 P. M., upon a lengthy but highly satisfactory meeting.

THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

I. Date: October 24, 1946.

Author: Dr. Roscoe J. C. Dorsey, former Professor of Roman Law and Jurisprudence at the Washington College of Law.

Title: Roman Juristic Influence on English Property Law.

Abstract: The paper compared the various institutes in the two systems, *v.g.* conditions, leases, mortgages, easements, riparian rights, fixtures, and prescription.

II. Date: November 19, 1946.

Author: Dr. Vladimir Gsovski, Chief of the Foreign Law Section at the Library of Congress and Head of the Russian Department of the School of Foreign Service.

Title: Roman Law in Soviet Law.

Abstract: The paper traced the development of Soviet legal theories from the first days of the regime to the present, showing that an attempt was made to eliminate the institutions of the alleged bourgeois such as property and inheritance and even to reject the necessity of law itself. Roman Law survivals that persisted in spite of such attempts were studied and effectively distinguished.

III. Date: December 16, 1946.

Author: Dr. Elio Gianturco, Research Assistant in the Foreign Language Section, Law Library of Congress.

Title: Roman Law as a Controversial Theme in the Intellectual History of the 18th Century.

Abstract: The paper analyzed and compared the attitudes of 18th century jurists, historians and philosophers toward Roman Law as an instrument of social control, as a cultural phenomenon and as a subject of academic teaching.